New Long Beach Courthouse

A PERFORMANCE-BASED INFRASTRUCTURE COURT FACILITY PROJECT

JOINT LEGISLATIVE BUDGET COMMITTEE
JUNE 9, 2008

ADMINISTRATIVE OFFICE OF THE COURTS

Judicial Council of California
ADMINISTRATIVE OFFICE OF THE COURTS

455 Golden Gate Avenue • San Francisco, California 94102-3688
Telephone 415-865-4200 • Fax 415-865-4205 • TDD 415-865-4272

RONALD M. GEORGE
Chief Justice of California
Chair of the Judicial Council

WILLIAM C. VICKREY
Administrative Director of the Courts

RONALD G. OVERHOLT
Chief Deputy Director

June 9, 2008

Hon. Denise Moreno Ducheny, Chair
Joint Legislative Budget Committee
State Capitol, Room 5035
Sacramento, California 95814

Hon. John Laird, Vice-Chair
Joint Legislative Budget Committee
State Capitol, Room 6026
Sacramento, California 95814

Hon. Robert Dutton, Vice-Chair
Senate Budget and Fiscal Review Committee
State Capitol, Room 5094
Sacramento, California 95814

Hon. Roger Niello, Vice-Chair
Assembly Budget Committee
State Capitol, Room 6027
Sacramento, California 95814

Re: Performance-Based Infrastructure Proposal for a New Long Beach Courthouse

Dear Senator Ducheny, Senator Dutton, Assembly Member Laird, and Assembly Member Niello:

Thank you for your consideration of the proposal by the Administrative Office of the Courts (AOC) to construct a new court facility in Long Beach for the Superior Court of California, County of Los Angeles as authorized by legislation (Stats. 2007, ch. 171). In response to questions regarding the proposal raised by committee staff and the Legislative Analyst's Office, I am providing additional information to you to indicate both how and why the AOC is proposing a "performance-based infrastructure" (PBI) approach to the financing and construction of the facility. Based on the analyses we performed, we have determined that PBI delivery for the Long Beach project has the strong potential to provide the best value for the residents of California and to be the best approach to address the public's immediate need for a safe and accessible courthouse. This conclusion will, of course, be tested, after receipt and evaluation of PBI proposals following the completion of the PBI procurement process.

The additional information accompanying this letter consists of a Supplemental Report and supporting material arranged in 13 tabbed sections with a table of contents. For your convenience, Tab 1 is a list of questions from the Legislative Analyst's Office and Joint Legislative Budget Committee staff, together with answers and cross-references to relevant supporting information.

To study the best financial models for the Long Beach project, we retained Ernst & Young Advisory Inc., one of the world's most experienced firms in advising public agencies on infrastructure projects. Ernst & Young has confirmed that the financial analysis we undertook is reasonable and consistent with that used by other governmental entities in the United States and around the globe. Attached is the firm's letter describing the financial analysis performed for the Long Beach project and confirming that the methodology is in widespread use for similar projects (Tab 9). We were also advised by Davis Langdon & Seah International, a leader in cost consultancy, who has also submitted a letter in support of the analysis performed for this project (Tab 10), and by Hawkins Delafield & Wood LLP, a law firm with extensive experience in public infrastructure. Our analysis led us to conclude that soliciting bids for a performance-based infrastructure model offers the best opportunity to construct a high quality, cost efficient courthouse in a timely manner. It also provides the potential to ensure that, once constructed, the courthouse will be maintained for 35 years pursuant to contractual performance standards.

We estimate that a PBI approach can result in completion of the project in fall 2011, approximately 30 months earlier than can be expected using the standard state design/bid/build process. The risk of any delay in development or construction is shifted to the private sector because payment is not made until the facility is completed. The PBI approach also allows for construction of space in the new building that will be available for lease to the County of Los Angeles for the offices of the public defender and the district attorney, which will result in significant operational efficiencies and related cost savings for both those agencies and the Superior Court. Significantly, a PBI approach allows the state to build space into the project for additional courtrooms to accommodate anticipated future needs for court space using today's construction costs.

Based on conservative assumptions, our analysis indicates that over the life cycle of the new facility a PBI approach would cost the state up to $52 million less than would a traditional state-financed construction project.

I ask that the committee consider the supplemental report and the additional information provided and concur that it is appropriate for the AOC to proceed with issuing a request for qualifications (RFQ). This will permit us to solicit responses from interested firms and to assess whether the proposed PBI approach to this project is, indeed, a viable one that will in fact provide the best value to the state. The AOC plans to invite a small number of firms selected through the RFQ process to submit responses to a request for proposals.

The proposals submitted will allow the AOC and the California Department of Finance to review, analyze, and validate the projected cost-effectiveness of the PBI approach and to proceed with replacing the existing woefully inadequate facility to meet the needs of the public we serve.

Sincerely,

William C. Vickrey
Administrative Director of the Courts

WCV/MMR/ec/lb
Enclosure
cc: Hon. Ronald M. George, Chief Justice of California and Chair of the Judicial Council
Mr. Michael C. Genest, Director, California Department of Finance
Mr. Nathan Brady, Principal Program Budget Analyst, California Department of Finance
Mr. Chris Ryan, Deputy Legislative Affairs Secretary, Office of the Governor
Ms. Jody Martin, Principal Consultant, Joint Legislative Budget Committee
Ms. Keely Martin-Bosler, Consultant, Senate Budget and Fiscal Review Committee
Mr. Joe Stephenshaw, Consultant, Assembly Budget Committee
Mr. Matt Osterli, Consultant, Senate Republican Fiscal Office
Mr. Alan Cooper, Consultant, Assembly Republican Fiscal Office
Mr. Dan Carson, Director, Criminal Justice Division, Legislative Analyst's Office
Ms. Nancy Paulus, Senior Fiscal and Policy Analyst, Legislative Analyst's Office
Mr. Ronald G. Overholt, AOC Chief Deputy Director
Ms. Mary M. Roberts, General Counsel, AOC Office of the General Counsel
Mr. Curtis L. Child, Director, AOC Office of Governmental Affairs
Ms. Kim Davis, Director, AOC Office of Court Construction and Management
Mr. Stephen Nash, Director, AOC Finance Division

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1. OVERVIEW AND CONTEXT

A. AOC's Objective Is to Replace the Dilapidated Long Beach Courthouse

The primary objective of the Judicial Council and the Administrative Office of the Courts (AOC) has been, and remains, the replacement of the existing Superior Court of Los Angeles County's Long Beach courthouse, using whichever financing or project delivery method provides best value to the state. Replacing the current courthouse in Long Beach is one of the council's highest construction priorities, as the Long Beach facility is functionally and physically deficient and is among the worst in the state in terms of security and overcrowding. This outdated and outgrown building does not meet the state's current needs and is incapable of meeting the region's growing demand for court services.

In June of 2007 the AOC completed its review of a potential project to replace the existing courthouse. In evaluating the feasibility of a courthouse replacement project, the AOC considered the option of renovating and expanding the existing facility. This option was not considered viable, due to the age, physical condition, and functional issues present in the existing courthouse. In order to address the major functional issues, an entire building renovation would be required. Furthermore, the temporary relocation of the entire court staff and judicial officers during construction would be prohibitively expensive.

Staff recommended that the facility needs for the Superior Court of Los Angeles County (Court) be met by the construction of a new courthouse with 31 courtrooms in the Long Beach area. The proposed courthouse would replace the existing building and provide four new courtrooms for anticipated new judgeships, including secure parking for judicial officers and key administrative staff. The new courthouse would increase security in the transport and holding of in-custody criminal defendants, and correct the functional deficiencies of the current building. The council and AOC's major consideration in this process was how best to serve the current and long-term needs of the public and the justice system.

B. Legislative Solution

During the development of the FY 2007-2008 State Budget, the Legislature faced a $2.4 billion deficit in the state's general fund. The Governor's proposed budget included four new courthouse projects for the superior courts in the counties of Madera, San Bernardino, San Joaquin, and Riverside. That spring, the AOC requested the authorization of five additional courthouse construction projects: San Benito, Tulare, Lassen, Calaveras, and Los Angeles (Long Beach).

The AOC, in conjunction with the Administration, saw the limitation on the Construction Fund as an opportunity to innovate in the delivery of capital outlay projects. Thus, the AOC worked with the Legislature on a proposal to construct a new Long Beach courthouse utilizing a public-

private partnership. The use of a public-private partnership provides a means for capital construction using the general fund as the source for annual service payments, without impacting the state's bond capacity, as well as a means to deliver a project to the state more quickly and at a lower cost.

Recognizing the dire need to rebuild the state's court facilities infrastructure, the Legislature authorized the investigation and possible use of a public-private partnership to construct the new Long Beach court building. The Budget Act of 2007 directed the council to investigate the use of a public-private partnership for the Long Beach court building, and to develop a process and criteria for evaluating alternative methods of project delivery. (Stats. 2007, ch.171.) In conjunction with the Budget Act, the Legislature enacted Senate Bill 82 (Stats. 2007, ch. 176), which added a new section to the Trial Court Facilities Act (Stats. 2002, ch. 1082, commencing at Government Code § 70301 (the Facilities Act)). The new section70391.5 requires the council to develop performance expectations for court facility proposals that include a public-private partnership component, and to establish benchmark criteria for total project costs for these proposals. Together with the Budget Act, this legislation establishes a framework by which the separate branches of state government may evaluate the potential benefits of non-traditional project delivery. Under this framework, after the council establishes project performance expectations and benchmark cost criteria, it may issue a solicitation for a proposed project that includes a public-private partnership component if the Director of Finance has approved the proposal, and the Joint Legislative Budget Committee has been notified and has not expressed opposition or concerns regarding the performance expectations and benchmark criteria. The legislation is attached in Tab 2-Legislation.

After the enactment of section 70391.5 the council delegated to the AOC the task of creating the required performance expectations and benchmark cost criteria. AOC staff then began its analysis of a delivery method that would provide for a private entity to perform *"all capital activities, including the financing, design, construction, maintenance, and operation of a building."* (Stats. 2007, ch. 176, §1(a)(4).) The results of that analysis are discussed in the materials provided to the Department of Finance and to the Legislative Analyst's Office, and are described in more detail below.

C. Current Long Beach Courthouse

The existing 27-courtroom Long Beach courthouse, located in downtown Long Beach, is the Court's main court facility for its South District. The courthouse was built in 1959, and handles a variety of civil litigation types and all criminal matters for the cities of Long Beach, Signal Hill, San Pedro, Wilmington, Harbor City, and a small region of the City of Los Angeles. The courthouse averages 385 felony and 3,327 misdemeanor filings monthly. On average the building is subjected to movement of 225 in-custody defendants through its corridors each day. On average, 109,000 people enter this building each month.

The Master Calendar courtroom handles 75 to 100 felony custody cases per day, and the Misdemeanor Custody Arraignment courtroom averages 50 to 75 custody cases per day. Because each courtroom can only accommodate 14 defendants in security "cages," however, in-custody criminal defendants are often placed in audience seating for their arraignment. High-volume misdemeanor courtrooms average 100 to 125 cases per day and up to 150 on peak days. Due to inadequate seating, some individuals appearing in court must remain outside the courtroom until seats become available. More detail regarding the volume and type of courthouse usage is attached in Tab 3- Current Usage of the Long Beach Courthouse.

D. Deficiencies of the Current Courthouse and Safety and Security Impacts

The existing court space limits the extent and quality of services that can be provided. At present, the courthouse is severely overcrowded in all areas and lacks several necessary support spaces for efficient and effective functioning. For example, the Court's high-volume traffic court is held in a modular unit located in the parking lot due to space limitations within the courthouse.

The outdated and outgrown current building is and will become increasingly incapable of meeting the region's growing demand for court services. In addition to being overcrowded and inadequate for the area's needs, the facility itself is in deplorable condition. The building's inadequacies pose a serious threat to safety and security, and are deficient in terms of access for people with disabilities. Additional detail regarding the condition of the courthouse, including photographs, is in Tab 4- Condition of the Facility.

As noted, a high volume of in-custody criminal defendants move through the building each day. For the most part, in-custody defendants are escorted through the same hallways utilized by judicial officers and court staff. However, the configuration of some courtrooms requires in-custody defendants to be escorted through the same hallways that are often crowded with witnesses, jurors, spectators, and other court users. Juvenile detainees must cross public hallways, often filled with family members and witnesses, to reach detention areas and to appear in court.

The elevator used to transport in-custody criminal defendants is inoperable approximately 40 percent of the time. Therefore, the security elevator normally used by judges and court employees must be used for the transport of these defendants. When this occurs, the defendants must be escorted through hallways with access to judge's chambers, jury deliberation rooms, and unlocked doors to courtrooms. Judges and employees must then use public elevators, escalators, and stairways. There are also not enough individual holding cells to segregate gang members, informants, and other "keep-aways" from the general population of inmates, which results in frequent attacks on prisoners by other prisoners.

There is no public elevator access to the sixth floor, the jury assembly room, the cafeteria, and the Office of the Public Defender. In January 2005, a juror serving jury duty on the sixth floor suffered a heart attack and the emergency response team was delayed in reaching the victim because the escalators were not working. An estimated 26 percent of all of the Court's escalator injury claims arise from accidents in the Long Beach courthouse. In addition, the modular unit housing the Court's traffic division has leaks, mold, and termite infestation.

Two independent surveys, one by the County of Los Angeles and one by the AOC, concluded that the building could collapse in the event of a medium-sized earthquake on a nearby fault. While Los Angeles County is undertaking a seismic upgrade project, this work is limited to preventing collapse of the building and will not be a full long-term solution. On completion of this project the building will still not meet the Facilities Act's seismic criteria, which require that the structure pose a "moderate" risk to any of its occupants during an earthquake, and that damage must be repairable. A full retrofit would cost many millions of dollars more than the County's upgrade project, and would still not address the building's functional and security deficiencies. If the courthouse could not be re-occupied following a medium-sized earthquake, all of its cases would have to be transferred to several remote locations, as none of the Court's current facilities has excess space capable of absorbing the heavy caseload currently handled in the Long Beach courthouse.

The deplorable condition of the facility, the extreme lack of security and overcrowded conditions, and the public's hindered access to court services are among the reasons why replacement of the courthouse is one of the council's highest priority facility projects.

E. Court and Public Needs, Functionality, and Projected Expansion

1. Desired Functionality

A new Long Beach court building will improve the Court's functionality and enhance its ability to serve the public by replacing and consolidating court operations from two unsafe, overcrowded, and physically deficient facilities —the current courthouse and its onsite traffic court modular building. A new court building will allow expansion of court services by adding four courtrooms (for a total of 31 courtrooms) to accommodate four new judgeships and to allow for anticipated future growth. The new court building will also be more secure, because it will be designed to: separate the movement of prisoners from the public, judicial officers, and staff; provide one consolidated holding cell area that can be efficiently monitored and staffed by the Los Angeles County Sheriff's Department; provide adequately-sized holding cells and an adequate number of "keep away" cells for separation of in-custody populations, such as gang members, sex offenders, or any who are considered "high profile"; and include a central building security control room to oversee and ensure that all functions within the facility are adequately monitored.

The new court building will also be designed to be compliant with all current disabled access standards, making all spaces within the building—including courtrooms, restrooms, elevators, and hallways—completely accessible to all court users and staff. In addition, the building will be designed to include a self-help center for self-represented litigants, an adequately-sized jury assembly room, an alternative dispute resolution center, attorney interview/witness waiting rooms, adequate public service counters for traffic, civil, family, criminal, and juvenile case processing, and adequate public waiting areas outside each courtroom.

In addition to functional improvements, the building's performance standards require that this new court building will be a healthy and safe environment designed and constructed using proven best practices and technology, and will consume 15% less energy than permitted by the California Energy Code in order to control long-term ownership costs and reduce the consumption of natural resources.

2. Basis for Growth in Court Facility Needs

The space program for the new Long Beach court building includes 31 courtrooms, plus space that will be initially leased to non-court users but that can be converted easily to additional courtrooms as the need arises. The decision to include expansion space in the new building is based on projections for the Court's future needs through the year 2044.

The new Long Beach court building will be the main courthouse in the Court's South District, where the Court's expansion needs are projected to be greatest. To determine how many more courtrooms would be needed to serve the South District, the AOC collaborated with Court staff and used data from the AOC's Office of Court Research (OCR) and the Court's Facilities Master Plan (Master Plan). OCR assesses the need for additional new judgeships by applying a methodology referred to as the Judicial Workload Assessment. Judicial workload standards were themselves initially developed from the California Judicial Needs Assessment Project, to which the National Center for State Courts provided its expertise. OCR's assessment applies the judicial workload standards to each court's caseload data to develop the number of judges each court will need, projected through 2029. Future caseload projections are based on the caseload projections in the Master Plan, and assume the first set of 150 new judgeships will all be funded by 2009. AOC extrapolated from the OCR projections, which resulted in a projected need of an additional 219.6 "Judicial Position Equivalents" (JPEs) for the entire Los Angeles Court from 2010 to 2044.

The Master Plan indicates that historically 6% of all of the Court's JPEs are assigned to the South District. The Court concurred that this figure was a sound basis for determining future South District JPE allocations. By applying this historical percentage of 6% to the projected number of JPEs for the Court, the South District should require an additional 13.2 JPEs by 2044. Given four new judgeships are already included in the 31 courtrooms in the new courthouse project, by 2044 there will be a need for a further 9.2 or 9.0 JPEs for the South District.

To address this future need, the project plan for the new court building includes one floor that can be remodeled in the future to accommodate courtrooms for new judges. Depending on the final configuration of the building, this extra floor would accommodate six or eight of the nine courtrooms projected to be needed by 2044. Further information regarding projected space needs is attached in Tab 5- Court and Public Needs in Long Beach.

2. PROJECT DELIVERY AS PERFORMANCE-BASED INFRASTRUCTURE

Following enactment of section 70391.5, the AOC began a process of identifying alternative delivery methods for the Long Beach court building project the legislation required. Private participation in the procurement of infrastructure, and therefore what constitutes an alternative delivery method or "public-private partnership," takes a variety of forms. Project delivery via public-private partnership is also referred to as "performance-based infrastructure" or "PBI." For ease of reference, we use the term "PBI" to refer to an arrangement in which a private sector service provider executes a service agreement with a public entity to design, build, finance, operate, and maintain a particular facility over a 35-year term, with payment to the private party contingent on its meeting stated performance requirements.

A. PBI Delivery and Examples

Traditional methods of capital project delivery generally include private sector participation in the building and maintenance of infrastructure projects. One of the major differences between traditional private sector participation and PBI delivery is that in the latter private contractors are obligated to long-term maintenance or operating contracts, and take responsibility for the quality of the work they perform. The integration of design, construction, operation, and maintenance results in a coordinated approach such that initial building quality is directly tied to ongoing costs of providing a well-functioning facility. In addition, the contractor is financially impacted if performance does not meet the required standard throughout the term of the contract. Another benefit of the PBI delivery method is the ability to transfer significant delay and development risks to the private sector.

PBI delivery is a well-documented and analyzed method of delivery in public infrastructure projects. The delivery method has been successfully employed for numerous hospital and school projects in the United Kingdom and is increasingly used in Australia, Canada, and the United States. PBI has been employed for twenty-three court facilities worldwide, including a courthouse similar in scale and complexity to the proposed new Long Beach court building that is currently under construction near Toronto, Ontario. A list including details of specific projects is attached at Tab 6- PBI Project Examples.

In the United States in particular, PBI is increasingly being used in several public works sectors. In the transportation sector, PBI has recently been used in Florida by the Florida Department of Transportation for a tunnel connecting the Port of Miami to the mainland. In the water and

wastewater sector, Cranston, Rhode Island built major improvements to its wastewater treatment plant in the late 1990's using a PBI procurement approach. And in the 1980's and 1990's more than a dozen large-scale waste-to-energy facilities were built around the country using PBI, including projects in New York, Connecticut, New Jersey, Maryland, Massachusetts, and several other states. PBI contract terms have ranged from 20 to 35 years.

Public-private partnerships for judicial facilities in the U.S. have so far included private participation in design, construction, or operation. However, projects to date have typically used state financing, and have not obligated the project company to provide finance and long-term operation and maintenance. The arrangements currently in use for judicial facilities therefore transfer only a limited amount of risk to the private sector. There are, however, increasing numbers of judicial buildings developed via PBI worldwide.

B. Selecting a Delivery Method

In order to determine which alternate project delivery method would produce the best result for the residents of California, a list of qualitative criteria was developed for the new Long Beach court project. Delivery methods were then evaluated and ranked according to the likelihood of meeting the criteria. The criteria included whether the delivery method would provide a project large enough to serve future as well as current needs, whether the method included opportunities to integrate court and other justice agency operations, and whether the method allowed for improved facility management performance. A chart describing this analysis in more detail is attached in Tab 7- Evaluation of Options.

Staff evaluated the following delivery methods against the above criteria: 1) traditional design, bid, build of a court-only building, using state bond financing; 2) a court-only building using design-build with traditional state management and financing; 3) a court building with space for justice partners, using design-build with traditional state management and financing; and 4) a court building with space for justice partners and future expansion using PBI delivery.

After weighing the benefits and disadvantages of each option, it was determined that PBI delivery would most likely accomplish the AOC's objectives for the new Long Beach court building. PBI delivery provides the following opportunities: 1) the ability to construct in a single project a facility large enough to incorporate other justice agencies, as well as meet the anticipated growth in the area's needs for court facilities over the next forty years; 2) the engagement of private sector expertise in an integrated design, construction, and operations approach to deliver the building more quickly and in a manner focused on its long-term operation costs; 3) the opportunity to procure a new courthouse without either funding construction upfront, or burdening the state's lease revenue bond capacity which may be needed for other state projects; 4) the ability to offset costs through lease income from other tenants; and 5) the opportunity to transfer the risks of development and of delay to the private sector.

C. What is meant by a PBI for the New Long Beach Court Building?

Given the specific objectives of the AOC, and the language in section 70391.5, the AOC focused on a PBI delivery method for the Long Beach project in which a private entity (the "Project Company") would enter into a 35-year service agreement with the state. In exchange for the state's payment of an annual service fee, the Project Company would design, build, finance the construction, and continue to operate and maintain the building for a period of 35 years. (This model is also called "DBFOM" delivery.) The state's total payment to the Project Company for design, construction, and finance would be fixed in advance, with the portion of the state's payment representing the costs of ongoing operation and maintenance adjusted annually to reflect changes in an agreed-upon index. Under this delivery method the state can identify its annual obligation per year with certainty, and greatly reduce its exposure to cost increases.

D. Key Advantages of PBI Delivery

PBI delivery of the new Long Beach court building can provide measurable benefits to the state. PBI delivery allows the Project Company to select contractors for each of the phases of the project, providing for competition and potentially lower costs to the state at the design stage, during construction, and at the operations stage. The construction contractor, as part of the PBI consortium, will be selected on a qualifications basis as opposed to traditional low-bid project delivery. Because the designer, builder, operator, and financial partners must collaborate on project development and implementation, the project itself is developed with a strong focus on long-term costs and operations. This collaboration is not possible under traditional project delivery, where each firm may interact only with the owner, not with each other. An added benefit is that in PBI delivery a single firm is accountable for operation and maintenance throughout the 35-year contract term, providing the state with a single point of contact and responsibility, as opposed to the four firms that would be responsible for each of design, construction, operation, and maintenance in a traditional project. In PBI delivery the state owns both the project site and the building from the beginning of construction through the entire term of the service agreement.

Another significant benefit to the state in PBI delivery is that in PBI the Project Company's equity investors and lenders are integrally involved in the development, design, construction, operation, and maintenance of the project. In traditional delivery bondholders are generally indifferent to the degree of success of the project. However, the service agreement between the Project Company and the state allows the state's payments to be reduced if there are lapses in maintenance, or the building is not fully functional. In addition, the state is not obligated to make any service payments at all until the building is completed. Given that the Project Company's financial partners are relying on a constant stream of payments to the Project Company, the company and its financial partners are highly motivated to complete the building quickly. The company's financial partners are also motivated to ensure the Project Company designs a high-quality building as it impacts its long-term operating and maintenance costs,

which provides assurance that the Project Company will receive the full service payment throughout the term of the service agreement.

Compared to the traditional state project delivery method, PBI delivery enables a project to proceed without state financing, can produce a more innovative and better-performing facility, may significantly speed project delivery by leveraging the dexterity of private development, and provides the state with the opportunity to transfer certain risks, including those of completion and building performance, to the private sector.

E. Leveraging Current Real Estate Assets

The City of Long Beach and its Redevelopment Agency (RDA) are very interested in locating the new court building in the City's downtown area. The AOC, the RDA and the City are currently in negotiations regarding a new site in the downtown area. The RDA has offered to exchange two downtown parcels as a site for the new court building. The City has offered the portion of its street connecting the two parcels. In exchange, the state would transfer title to the existing Long Beach courthouse property to the RDA.

In early 2006, when capital project requests were submitted for FY 07-08, the AOC considered the existing courthouse property to have potential for redevelopment as a site for high-rise residential condominiums. Since then, the overall real estate and credit markets have deteriorated. In Long Beach, the recent absorption rate for new rental apartments or condominiums is quite limited, and several proposed projects on attractive sites in downtown have been canceled due to the lack of a ready market. Further, the financing for high-rise residential construction in this market is no longer available. (See Tab 8- Leveraging Existing Real Estate Assets.)

The existing court property is zoned for institutional uses, and is within the civic center, surrounded by the city's police headquarters, Long Beach City Hall, and a U.S. government office building. Views to the Pacific Ocean are blocked by recently constructed high-rise buildings. Given the surroundings, the existing court site is possibly more valuable for non-residential development. However, with the difficult current market conditions and the uncertainty surrounding the availability of credit, there is little possibility for speculative office building development on the site at this time.

The existing court site is the only portion of the civic center "super block" not controlled by the City of Long Beach. The site is also, perhaps, an irreplaceable resource for the City's long-range redevelopment plans for the civic center, which makes the City the best possible party to unlock the value in the site.

3. EVALUATION OF BENEFIT, RISK, AND COST

Having selected the PBI model as the potentially most advantageous alternative delivery method for the state given the AOC's objectives and criteria, staff and retained subject matter experts performed an extensive comparison of this delivery method against a standard state capital outlay project funded with tax-exempt bond financing. Staff defined the proposed project for the new Long Beach court building, including program components and scope, and then projected the total financing, construction, and life-cycle costs of that defined project if it were delivered as a traditional public sector capital project, and if the project were delivered via PBI.

This evaluation, called a "value for money" analysis, required a valuation of the costs, benefits, and significant risks either retained by the state under traditional delivery, or transferred to the Project Company via PBI. The costs to the state under each of the two models occur at different points in time, but are compared on a consistent basis using a Net Present Value (NPV) approach.

A. Value for Money Financial Analysis

The AOC engaged consultants and outside counsel to assist in properly evaluating the delivery options for the new Long Beach court building in accordance with statutory mandates. Public entities' use of independent consultants is a common practice, particularly in connection with large financings of utility and transportation facilities. Through competitive solicitation processes that drew proposals from recognized experts in the field of public infrastructure projects, the AOC selected consultants Ernst & Young Advisory, Inc. and Davis Langdon Seah International. The AOC selected Hawkins Delafield & Wood LLP as outside counsel to the agency, again through a competitive solicitation process.

Ernst & Young is a recognized leader in the field of public infrastructure projects throughout the world. The firm has led projects for the development of many different types of infrastructure, as well as many different types of public entity, and has experience in California and throughout the U.S., and in Canada and the United Kingdom, among other jurisdictions. Davis Langdon is a leading international project and cost consultancy and has provided cost and risk management to public and institutional owners in California for over twenty years. The firm has extensive experience with complex university, hospital, and justice development projects.

Ernst & Young, Davis Langdon, and the AOC developed a "value for money" analysis to compare the overall project costs of the two delivery approaches (PBI and traditional state finance and development) in order to determine which would provide the best value to the state. The value for money analysis has been presented to the Department of Finance and to the Legislative Analyst's Office.

Ernst & Young prepared the attached report and information on the financial analysis, the risk assessment, and quantification methodologies applied in the Long Beach project in response to enquiries by the Legislative Analyst's Office. (See Tab 9- Ernst & Young Opinion Letter and Supporting Information.) As independent experts in infrastructure delivery, Ernst & Young opines that the result of the financial analysis demonstrates the PBI approach for the new Long Beach court building is likely to provide greater value than traditional state project delivery.

In addition, Ernst & Young concludes that the process of assigning a dollar value to risk in comparing the costs of a PBI project to a typical state project is standard practice in jurisdictions analyzing delivery methods, that the accepted methodology in such jurisdictions is to assemble subject matter experts to assign dollar values to the risks identified, that the AOC's project team that performed the risk assessment for the Long Beach project was assembled in a manner consistent with industry practice, and that the dollar values of risks assigned by the team of experts to the Long Beach project are reasonable and also consistent with industry practice. Ernst & Young also explains that the project team applied a conservative discount rate, representing the state's cost of borrowing, to the costs of both traditional delivery and to PBI delivery for the Long Beach project, as well as a more realistic rate adjusted upward to reflect the amount of risk transferred under PBI. The analysis indicated that PBI delivery would likely be more cost-effective for the state than traditional project delivery under both discount rates.

Davis Langdon also prepared a report on the structured risk analysis, quantification, and allocation undertaken for the proposed new Long Beach court building. (See Tab 10- Davis Langdon Opinion Letter and Supporting Information.) Davis Langdon's professional opinion is that both the analysis and methodology are appropriate for a project of this nature. They state that "the use of a structured risk analysis process is the best way of dealing with decisions related to procurement methodology, since the factors involved are predominantly risk related; namely how risk and risk allocation is priced by the market under differing procurement methodologies." The firm's opinion is supported by extensive research indicating that the preconstruction risk assessment models, which are similar to that undertaken in this project, are broadly accurate, and that private finance initiative projects are shown to carry a significantly lower risk to the public ownership than traditional design-bid-build processes.

B. Risk Assessment and Allocation

Structured risk assessment can be used both to evaluate alternative project approaches, and to develop a risk management program for a given project. The process requires an assessment of both the likelihood of an event, and the event's impact. It also includes an assessment of the best allocation of that risk, and potential mitigation strategies that are available to reduce either the likelihood or the impact. Since each project is different, the customary method is to evaluate the project specific risk through a workshop bringing together the relevant expertise for the project. The risk assessments are of necessity subjective opinions of the attendees, but represent the

experience-based collective wisdom of the group. When comparing alternative approaches, the goal of the workshop is to generate analytical data to inform the selection of an approach. As such, the mathematical outcome of the process is intended to provide reliable direction through the preponderance of evidence. By its nature, risk is not precisely predictable. The stated average risk, and the risk distributions and ranges, are indicative, not predictive. The risk analysis will show which of the alternative approaches carries higher potential risk, both in overall magnitude and range.

In order to include risk in a cost/benefit analysis, the risk must be assigned a quantified dollar value. If the costs of the risk are borne by the PBI Project Company rather than the state, the risk is considered "transferred" to that company.

C. Approach to Quantifying Risk and Supporting Studies

The principle of risk transfer is best understood in context. As an example, the risk of delay in the project schedule prior to building completion is a significant risk in many construction projects, and it leads to increased costs for the owner. In a traditional state capital project, the state is responsible for managing the project schedule until construction begins, and often bears the risk of delay during construction. Although delays in capital-outlay building projects arise from various sources, in order to complete the project the state generally must either increase the project's funding, or reduce the scope and quality of the project to counteract cost escalation.

In a PBI delivery model, however, the selected Project Company bears the risk of most schedule delays in obtaining funding, completing design, and constructing the building. In this model the state has no obligation to make its annual payment until the construction of the new building is completed. Consequently, the state has effectively transferred these risks and is shielded from the resulting cost increases. In addition, given that no payments are forthcoming until the building is completed, it is reasonable to assume that the Project Company will manage the schedule to ensure no delay in occupancy.

The risk assessment for the new Long Beach court project suggested a relatively high risk of project delays. In particular, AOC staff reviewed eighty-eight (88) active public building projects in California. The analysis revealed that 87.5% were behind schedule and the delays have added 36 months to the average building occupancy date. Detailed information on this study is attached at Tab 11- Schedule Performance of State Projects.

PBI delivery also transfers other significant project risks to the Project Company, as discussed above. One other major risk transferred to the private sector is the risk that the finished building will not perform to established requirements, or will not continue to perform as expected throughout its life-cycle. The risk assessment for the new Long Beach project included an analysis of more than 70 different industry-accepted risk factors, and the values accruing to each

of PBI delivery and traditional delivery if those individual risks are transferred to the Project Company, or retained by the state.

D. Comparison of PBI and Traditional Project Schedules

AOC's assessment of the likely design and construction schedule indicates that a PBI approach could provide the new Long Beach court building thirty (30) months earlier than if the project followed a traditional approach. This time advantage is due to an overlap of early design with CEQA clearance, and to the PBI Company's use of fast-track working drawings, bidding and construction (a proven private sector method to avoid cost escalation and to expedite building completion that is not allowed under traditional state capital outlay project procedures). Further information regarding the likely timeline for various tasks is provided in Tab 12- Comparison of PBI and Traditional Project Schedules.

4. PROJECT AGREEMENT AND PROTECTION OF THE STATE'S INTEREST

The PBI delivery method chosen for the Long Beach project will require the Project Company to provide its own financing for the design and construction of the new courthouse. The AOC will execute an agreement being developed by Hawkins Delafield & Wood LLP between the AOC and the Project Company that will require the Project Company to provide to the AOC the services of designing, constructing, financing, operating, and maintaining the Long Beach court building. Service fee payments made by the AOC under the agreement will be subject to annual appropriation. However, the state will have no obligation to pay the Project Company any funds unless and until the project is completed to the AOC's satisfaction.

We anticipate that the Project Company will be required by its financial backers to make an equity contribution to the project, and this contribution is likely to be at least 10% of the construction cost. The Project Company will obtain loans from private lenders for the remainder of the project costs.

All of the Project Company's loans will be non-recourse to the state. The lenders to the Project Company will also not have any security interest or mortgage on the new courthouse. This type of financing is most similar to "project financing," which is an extremely widely applied financing method for large construction projects worldwide. In this type of arrangement, private lenders enter into the transaction on the understanding that they will only be repaid once the project is constructed and functional. The benefit of project finance is that capable, highly sophisticated lenders have the same interest as the client (in this case, the state) in the on-time construction of the project that meets the state's requirements. The lenders add their own expertise to the AOC's in ensuring that the selected project company is capable of performing its obligations, and in monitoring the company's progress.

As noted, the Project Company will be required to invest money and resources into the project. Before any final agreements are signed, the Project Company's potential lenders will have spent significant resources in investigating the Project Company and the major design, construction, and operations participants. Thus, unlike a project delivered via traditional methods, the Project Company and its backers all will have invested significant funds and other resources on the project long before construction begins. By requiring such a large investment from the project developer, this type of arrangement significantly reduces (if not eliminates) the instances in which a participant would simply "walk away."

A. Protection of the State's Interest During Construction

The Project Company will not receive money from the state for construction, but will instead receive its construction funds from its lenders on an as-needed basis. Upon the signing of the service agreement, the Project Company will be required to invest its equity contribution in the project. Its lenders will hold any amounts not immediately expended on the project in an escrow, and disburse the rest only as construction progresses. In order to ensure that construction funds are spent on the project, the lenders and the AOC will require a third party to certify that progress justifying further drawdowns has been made. The lenders will also require the design-build contractor to either post a letter of credit to ensure its performance, or provide a guarantee from an investment grade guarantor.

It is extremely unlikely that the Project Company, having drawn down significant funds for construction, would not make every conceivable effort to complete the project. Given that their repayment is contingent on construction being completed, the Project Company's lenders are also highly motivated to ensure the Project Company's performance. Unsatisfactory performance by the design-build contractor is a circumstance that would allow the AOC to declare a default under its service agreement with the Project Company. To avoid a default, the Project Company's lenders and investors will require the Project Company to remedy whatever aspect of the construction is unsatisfactory to the AOC, if necessary by replacing the design-build contractor. As a further protection against this default, the Project Company's lenders will have the ability under the agreements to "step in" to the Project Company's agreements, including the service agreement with the AOC and the agreement with the design-build contractor.

Significantly, under the service agreement payment structure the state's payment would not change, regardless of the costs of delay or of remedying unsatisfactory construction. Thus, due to the service agreement's payment structure, the Project Company and its lenders and investors bear the costs of making required corrections, together with the costs associated with the delay in construction that would likely result.

B. Protection of the State's Interest after Completion

The major protection for the state following the building's completion in a PBI delivery is its ability to reduce the annual service fee to the Project Company if the company fails to provide the required level of service. The AOC and its consultants have created a method for establishing the value of certain performance failures. If, for example, the elevators in the new building did not function as planned for one day, or for one week, the state's annual service payment would be reduced by a predetermined amount. If the building suffers severe, or ongoing, performance failures, the state would be able to call a default under the service agreement.

At completion of construction the Project Company will have outstanding loans in amount approaching the total cost of construction. Thus, the Project Company is highly motivated to remedy performance failures quickly, to keep the annual service payment at its full amount. The lenders are again highly motivated to ensure that the Project Company receives its full annual payment.

The Project Company's lenders will have the opportunity to "step in" to remedy performance failures by Project Company under the service agreement should the level of such failures reach pre-agreed levels. This mechanism will enable the lender to avoid termination under the service agreement by remedying the failures and ensuring continued satisfactory performance. However, if failures rise to a certain level and the lender does not step in to cure them, the AOC will also have the ability to terminate the service agreement altogether. The service agreement and other transaction documents will be structured such that the AOC's total annual service payments would continue unchanged, although they may be paid to a different party. The AOC would also receive either a full correction of the default, or be credited the cost of remedying the default, including the cost of engaging a new service provider.

5. CONCLUSION AND ACTION REQUESTED

If the Committee concurs that pursuing a performance-based infrastructure approach for delivery of the new Long Beach court building is beneficial to the state, the AOC will engage in a competitive selection process to solicit proposals from potential PBI Project Companies. The AOC would first request qualifications (RFQ) from consortia of finance, design, construction, and facilities management companies. A small number of the most qualified consortia who responded to the RFQ would be requested to prepare proposals in response to detailed facility performance standards and proposed contract terms for this project. The final PBI proposals received will include final contract terms, financial details, architectural and engineering design concepts, construction schedule, facility management approach, and total annual costs.

The AOC, with the assistance of its consultants, will review the PBI proposals against the performance and financial benchmarks, and a value-for-money analysis will be performed on

each proposal. These proposals will be tested to determine if they could potentially provide the new court building at a greater value for money to the state than would a traditional project. The submitted proposals will allow the AOC and the Department of Finance to review, analyze, and validate the projected cost-effectiveness of the PBI approach. The AOC will consult with the Department of Finance if the AOC determines that a PBI contract for the new Long Beach court building should be awarded. As required by statute, Department of Finance must approve that the final contract meets established performance expectations before the AOC may enter into the agreement.

The financial analysis of the proposed Long Beach court building project indicates that, based on conservative assumptions, a PBI approach would be up to $52 million less expensive to the state than a traditional state-financed construction project. It would also provide a high quality court facility that contains space to meet the state's future anticipated growth needs, thereby resulting in additional future cost savings.

We ask the Joint Legislative Budget Committee to consider the additional information we have provided, and concur that it is appropriate to issue an RFQ for the Long Beach court building as a PBI project. This concurrence will permit the AOC to solicit responses from interested firms and to assess whether the proposed PBI approach to this project is, indeed, a viable one that will, in fact, provide the best value to the state.

VALIDITY OF RISK ANALYSIS

1. What is the basis of the structured risk analysis used in the value for money comparison?
   a) Who uses this type of risk analysis?
   b) Is the risk analysis necessary?
   c) Are the risk analysis and allocation used for Long Beach Court consistent with industry standard? Provide examples.

The application of structured risk analysis is widely used internationally, and is also widely used in many specialized sectors of the U.S. construction industry. For example, this analysis is now mandated by the Federal Transit Authority and the Federal Highway Authority on projects that they fund. CalTrans also uses a structured risk analysis in its projects. In addition, individual school districts around the country now apply it to support their decision- making process. A risk analysis allows the state to better understand the range of likely outcomes and thus more fully assess the likely true cost of a project. The use of a structured risk analysis process is the best way of dealing with decisions related to procurement methodology, since how risk and risk allocation are priced by the market has a significant impact on the overall costs of the procurement methods under review.

The methodology employed to assess risk on the Long Beach court building is consistent with industry best practices. Further information on risk analysis is available in Tabs 9 and 10.

2. Wouldn't a comparison of the net present values (of public sector and private sector project costs) be the more appropriate approach to evaluate the different project delivery methods?

The analysis of the proposed Long Beach court building project as a PBI, and the analysis of the "public sector comparator" (PSC) were both undertaken on a net present value ("NPV") basis. The PSC is a financial representation of the project as it would most likely appear if delivered via traditional state design/bid/build methods. In each case the NPV accounted for all of the estimated costs and risks of the two project delivery routes.

Questions 3 and 4 will be answered together, as follows:

3. Explain the simulation program used to predict impacts of risk occurrences and how these results are to be used.

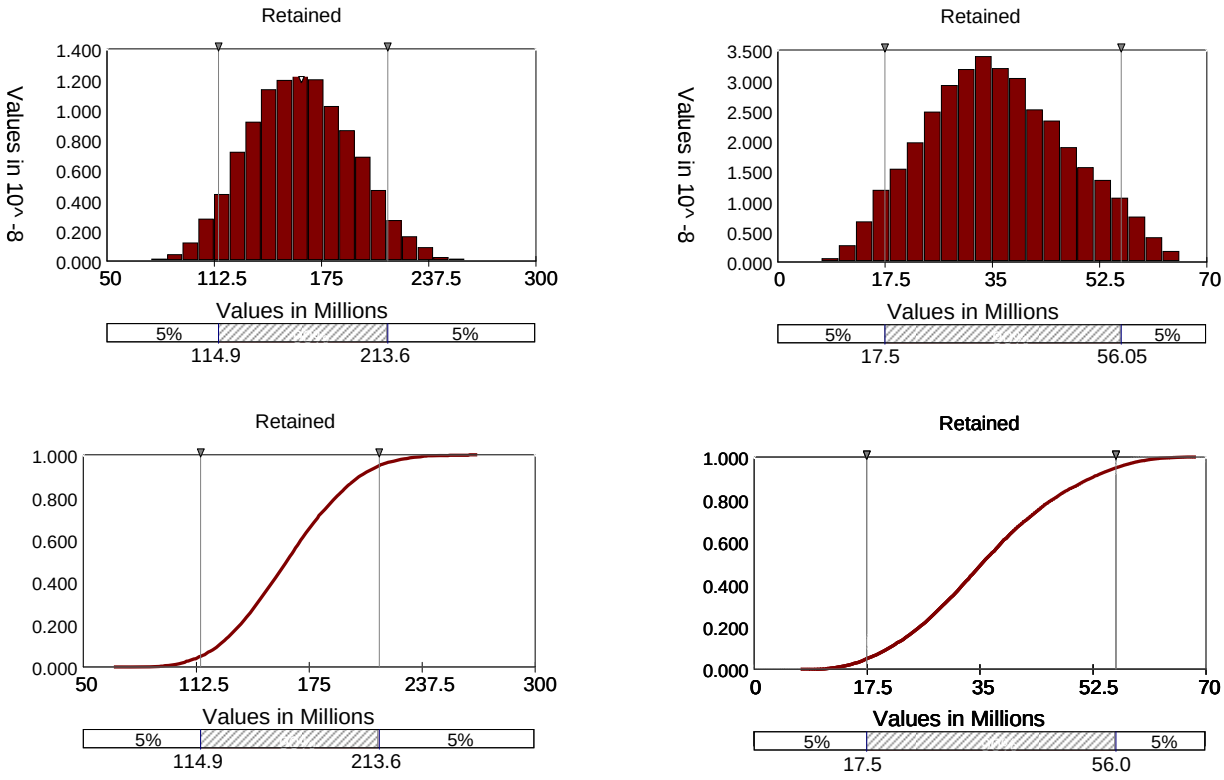
4. Clarify how the simulation program predicts the likelihood of various combinations of risk occurrences within the project.

The simulation program used to predict risk occurrences and impact (called a "Monte Carlo" simulation) is an industry standard add-in to Microsoft Excel called "@Risk." This program works by looking at each risk occurrence in an independent manner and running multiple iterations – typically 10,000. The program calculates the value of each risk in each separate iteration, based on the underlying probability distribution assumed for each risk. The results from the simulation are used to assess the likely project cost.

The output from the simulation program allows the user to determine the range of likely outcomes with a variety of confidence levels. For example, in the case of the Long Beach court building project the outcome of the @Risk analysis provided a range of values for the overall identified project risks as follows:

	PSC ($m)	PBI ($m)
95% Confidence Level	114.9	17.4
5% Confidence Level	213.6	56.0
Range (5-95% Confidence Level Spread	98.7	38.6
Mean	163.2	35.9

This risk profile indicates a significantly greater spread in the risks between the PSC and the PBI options. That is, the PSC is intrinsically more risky, both in the expected outcome and from the perspective of the range of probable outcomes. This is shown graphically below.



5. If evidence about the occurrence of certain risks differs from assumptions (i.e., the probability of a particular risk is lower in reality than as assumed), what is the impact on the value for money analysis?

Within the assumptions for risks there is a large number of factors that can change the overall value of the risk. These include assumptions made regarding the probability of the event occurring, the likely effect of the risk should it happen, and the range of likely values should the event occur. If any one of these assumptions is changed it is likely to affect the overall value and distribution of the risk analysis. It is not possible to assess the likely impact of any change unless the change is known and the revised assumptions are run through the @Risk program.

6. How comparable is the amount of risk transferred to the private partner (in the Long Beach analysis) to results for structured risk analysis done for other court public private partnership projects? Provide examples.

The risk analysis undertaken for the Long Beach court building project is comparable with similar PBI projects. The following chart provides information known to the project team on similar projects that have reached financial close. It is important to note that in the majority of PBI projects worldwide the public entity chooses to treat its final value for money analysis as confidential information.

Examples of quantified risk in PBI projects that have reached Financial Close

The figures represent the net of risk retained by the public sector entity under both PSC and PBI

Project	**NPV of PSC in millions**	**NPV of risk in millions**	**%**
Durham Consolidated Courthouse	426.0	157.0	36.9
Courts project - UK	18.0	2.7	15.0
Laganside Court Northern Ireland	40.7	4.2	10.3
Accommodation project - not yet published	450.0	176.0	39.1
GCHQ building Cheltenham UK	600.0	156.0	26.0
Home Office HQ UK	494.0	47.0	9.5
Schools project - UK	210.0	32.8	15.6
Schools project - UK	183.6	24.1	13.1
West Middlesex Hospital UK	123.9	12.5	10.1
Hospital project - not yet published – Canada	560.0	220.7	39.4
Hospital project- UK	225.1	37.6	16.7
North Bay Hospital	649.0	229.0	35.3
Abbotsford Hospital	463.0	46.0	9.9
Long Beach court building	492.0	127.0	25.8

Questions 7, 8, and 9 will be answered together, as follows:

7. How often are project schedules exceeded and how often are project cost budgets exceeded in public building projects in California? Compare this to the probability of these occurrences indicated in the structured risk analysis for the new Long Beach court project.

8. What is the evidence base for project schedule delays and cost overruns in public court building projects in California?

9. How does the total risk adjustment for each of the PBI and PSC options compare to the cost overruns that typically occur in comparable public and private sector projects (court buildings and other comparable projects)? Is it common for a project to experience all the risk occurrences that are included in the risk analysis for the courthouse project?

An analysis of ongoing projects in the Working Drawings and Construction phases as shown in the December 31, 2007 Quarterly Summary of Capital Outlay projects prepared by the California Department of General Services (DGS) demonstrates that 77 of the 88 were behind schedule. The average original schedule for project delivery was 41 months, but various delays have added 36 months to the average completion date. Because of significant annual escalation in the cost of construction, delays in project completion are often the basis for project budgets overruns. More detailed information is provided in Tabs 10 and 11.

In the past five years many projects have experienced significant budget problems. They include large public works projects in Southern California. In many cases the budget problems have been addressed during design through significant reductions in quality or space program, but there have also been many projects which received bids significantly in excess of their available funds. In both cases, the constant struggle to cope with rising costs often leads to extensive redesign, delay and wasted effort.

Because of the differing responses to the cost challenges it is not practical to develop a statistical analysis of actual cost variances on specific projects in the past five years. Many projects appear to be on budget, but are delivering significantly reduced quality, performance or scope due to budget overages. Other projects receive budget augmentations during programming or early design, so there is no consistent database of project costs which includes the initial budget, actual bid price, and scope and reduction changes during design.

Davis Langdon has opined that in projects for which Davis Langdon has provided construction cost consulting services, most projects have seen significant cost challenges, with bid overages, or design period scope adjustments amounting in many cases to 20 to 30% of the original budget.

With respect to comparison with PBI delivery, evidence supporting the probability of delay is provided by a UK Treasury survey of the performance of PBI projects in the UK. The survey compared PBI performance to existing data on traditionally procured projects. The following chart illustrates the result of this survey:

	PBI Projects	Traditional Projects
Delivered On Time	88%	30%
Delivered On Budget	73%	22%

10. Explain the basis of the probability and impact assumptions for the risk factors including objective evidence.

The risk analysis was determined through a risk workshop that was attended by the members of the project and its advisors, all of whom are experienced in working and advising on the development of major infrastructure projects. Attendees included one or more representatives of each of the following disciplines: architecture, engineering, cost estimation, construction project management, risk management, real estate, financial advisory, and legal advisory. Each attendee made his or her assessment based on his or her individual experience and expertise in public infrastructure and construction projects. The overall assessment is based on the experience-based collective judgment of all of the attendees.

The risk workshop attendees first discussed the risks identified for the project and agreed to the definition and applicability of each of the risks identified to achieve a universe of risks to analyze. Then, with respect to each individual risk identified, the attendees considered whether the risk would be borne by either the state or by the project company under the PBI and the PSC scenarios. The attendees also assessed the probability of that event occurring, and what impact that occurrence would have. In doing this the attendees considered what the range of the occurrence would be if the event were to happen. This was considered across three scenarios – optimistic, typical, and conservative, to try to define the range of possible outcomes for each risk occurrence.

11. Explain the assumptions behind the risk factors for technology selection of equipment (2.01) and regulatory changes in design (2.05).

The assumptions behind risks numbered 2.01 and 2.05 in the risk matrix are set out below.

2.01	Technology Selection (of equipment)	The risk that changes in equipment selection and/or specifications could affect the design requirements (room sizes, space requirements, power supply, cooling requirements) and could lead to increased costs.

The risk workshop attendees assessed the risk of this situation occurring was low, with only a 5% probability, and further agreed that if it did occur the effect would have an impact of between 1% to 10% of the total value of the design-build contract to remedy the situation.

This assessment was based on the fact that detailed specifications will be produced as part of the PBI solicitation process, and that the Project Company, its design-build contractor, and the technical advisors to its lenders, will have performed significant due diligence on these specifications prior to execution of the Project Company, and the additional fact that design work will be performed by the selected Project Company and its contractors as part of preparing its project proposal.

Under the PSC option the risk was assessed as being slightly greater, due to the lower level of work done prior to selection of the design-build contractor, and also the lower level of detail provided on the specifications. The effect of the risk occurring was determined to be the same (1-10%) as for the PBI option.

2.05	Regulatory Changes in Design	Risk that regulatory changes related to design will require the need to changes in drawings or, if later in the process, change orders.

In reviewing risk 2.05 the attendees considered that the possible risk quantification and probability were assessed as being equal under both the PCS and PBI. In relation to quantification, it was determined that is was moderately likely – a 15% likelihood - that some form of regulatory change would occur that would result in the PBI project company having to make changes to the design resulting in higher costs. The effect of this risk should it occur was assessed at 0.2% to 1.0% of the total design-build contract value.

12. Where does the analysis account for the possibility of vendor mismanagement, misbehavior/gaming (i.e., intentional low bidding resulting in higher future costs), or bankruptcy?

The risk workshop itself addressed the probability and impact of certain risks in this category, including risks numbered in the risk matrix:

- 2.06 – Financial capacity of proponent
- 2.07 – Bidding competition available
- 2.08 – Disputes between architects and contractors
- 4.03 – Failure to build to design
- 4.04 – Acceleration to maintain schedule

In addition, the proposed PBI arrangement will provide the state with extensive protection against such events. See the responses to questions 21-24 below for more information.

13. Are there major risks more likely to occur under a PBI model than a PSC model? How would the project minimize these risks to reduce an impact to the State?

The major risks on a project are no more likely to occur under a PBI than the PSC. In fact, they are less likely to occur in a PBI than a PSC due to the level of due diligence that will be undertaken on behalf of the investors and lenders to the PBI project company. See the responses to questions 21-24 below for more information.

14. How does the total risk adjustment for each of the PBI and PSC options compare to the cost overruns that typically occur in comparable public and private sector projects? Is it common for a project to experience all the risk occurrences that are included in the risk analysis for the courthouse project?

The risks considered in the risk analysis are those that are commonly experienced on similar projects to the Long Beach Court Building Project and are common to risk analysis undertaken globally on major construction projects – see Tab 9, Appendix 1A. The risk analysis considered

many types of risks affecting the whole life of the Project from approvals through design and construction and into long term operations and maintenance. Furthermore the risk quantified in the risk analysis is consistent with that experienced in other similar PBI projects globally – see Tab 9, Appendix 1B.

A project will not incur all of the risk occurrences that are included in the risk analysis and the risk modeling takes account of this through the stochastic modeling approach which is described in the response to question 3 above.

15. Is there evidence from implementation of PBI-type projects (courts and other projects) of risks not successfully transferred to the private sector as envisioned by the PBI approach? Are there examples where risks did not transfer to the private company as planned? How would the courthouse project be structured to address such potential problems with adequate risk transfer?

It is important to note that not all risks are transferred to the PBI company and that the final position enshrined in the PBI contract is a negotiated position arrived at between the public and private sectors.

The process anticipated for the Long Beach court building project is that the Request for Proposals (RFP) would include a draft of the PBI service agreement (to be developed in consultation with the DOF) and that the respondents to the RFP would have opportunity during the RFP process to comment on this agreement and to negotiate with the AOC. Thus, the service agreement will be finalized before the responses to the RFP are received. In this way the finalization of the PBI service agreement contract is done in a competitive manner to maintain the proposed risk transfer set out in the draft service agreement as much as possible. The AOC will review the PBI proposals and agreements with the DOF, whose acceptance will be a prerequisite for execution of the service agreement with the Project Company.

This process was used successfully on the Durham Courts Projects in Ontario where the risk allocation achieved is similar to that proposed in the PBI for Long Beach. The process of using the competitive tension to negotiate and finalize the contract on Durham was successful in maintaining the risk transfer to the partner.

INTEREST RATES AND DISCOUNT RATES IN VALUE FOR MONEY ANALYSIS

Questions 16 and 17 will be answered together, as follows:

16. Clarify that the assumed State cost of money was used for discount rate:
- **a) Why was this rate chosen?**
- **b) What do other public private partnership projects use?**

17. What is the justification for the analysis to use a discount rate of 7.94% rather than the state cost of debt rate of 4.90%? How does using 7.94% rather than 4.90% affect the analysis? In other PBI-type projects, what discount rate is used and how is the rate derived? Is there any disagreement among experts about the choice of the discount rate?

The financial analysis to compare the two procurement routes was undertaken on a NPV basis. In determining the NPV of the two routes, we ran two different scenarios using two different discount rates. These rates correspond broadly to the rates used by most governmental jurisdictions globally that use PBI or PPP.

- A rate of 7.94% was used, based on the calculated Project Internal Rate of Return (PIRR). The PIRR is discussed more fully in question 18 below; and
- A rate of 4.90% was used, based on the estimated cost of borrowing for debt raised through the state Public Works Board.

The result of the financial analysis is set out in the table below and demonstrate that the PBI approach for delivery of the Project is likely to provide greater value for money than the traditional state project delivery approach under both discount rates:

	Discount Rate – 7.94%	Discount Rate – 4.90%
NPV of Traditional Procurement Route ($m)	492	731
NPV of PBI Procurement Route ($m)	440	699
Value for money benefit $m	*52*	*32*
Value for money benefit %	*10.6%*	*4.4%*

As noted, this is an estimate of the likely result. The conclusion as to whether PBI will provide greater value for money will ultimately be tested after receipt and evaluation of PBI proposals following the completion of the PBI procurement process.

There is no common or agreed best practice with respect to the appropriate discount rate when comparing a project procured as a public or PBI project and the choice of discount rate is a decision for the procuring entity and project team based on sound economic investment theory. There are many acceptable theories for a procuring entity to choose from, and the following list indicates how other jurisdictions have proceeded:

- British Columbia and many other jurisdictions suggest the use of a specific discount rate for each project modified to reflect the risk transfer in a given project. This method is based on the common investment appraisal methodology known as the Capital Asset Pricing Model (CAPM);
- Other jurisdictions such as Ontario assume the government cost of borrowing;
- The United Kingdom suggests the use of the social time preference discount rate with risk adjustments for both identifiable risk and "optimism bias."

More information concerning the discount rate is available in Tab 9- Appendix 2.

18. Explain the derivation of the rate of return to investors (7.94%).

This rate is based on the calculated PIRR, which is derived from the financial model used to estimate the costs of the proposed PBI arrangement. The PIRR is a measure of the return generated by a project on the assets employed on the project and provides an indication of the market's perception of risk in the project. This rate is often referred to in an investment appraisal as a "risk adjusted rate."

The PIRR is calculated as the internal rate of return earned on the capital employed on the project.

Questions 19 and 20 will be answered together, as follows:

19. Does the Internal Rate of Return (IRR) already include a risk factor? Are certain risks double-counted with a structured risk analysis?

20. Explain the difference between credit risks (in the rate of return) and business risks (in the structured risk analysis & allocation).

The calculation of PIRR includes the systematic risk that the private proponent must account for within the framework of the risk transfer contemplated through the PBI procurement. The PIRR is derived on the basis of the estimated private financing and the required equity and debt returns and covenants for a project of this nature. In the case of the Long Beach court building the PIRR determined from the financial model is 7.94%.

Within the structured risk analysis, risks are not double-counted. Within any investment analysis, there are two types of risk, systematic and non-systematic. The structured risk analysis undertaken via the risk matrix is used to determine non-systematic risk. The PIRR is used to determine systematic risk.

Non-systematic risks are also known as the identifiable risks of a project, and systematic risk is often described as the risk of the entire market or market segment. Examples of systematic risk would be recessions, wars or other events that impact large segments of the market. The systematic risk accounted for through the PIRR is independent and separate from the identifiable risks which are accounted for through the risk register and risk adjustment in the analysis.

RISK TRANSFER IN THE PROPOSED PROJECT AGREEMENT

21. Illustrate protections, terms, or obligations in the project agreements which will transfer specific risks (such as those identified in the structured risk analysis) from the State to a PBI Company.

One of the key tenets behind PBI is that the public sector compensates the Project Company on the basis of the performance of the company in providing an agreed level of services to the public sector, and that the payments do not start until these services are being received to the agreed standard. For example, payments will not commence until the court building has been completed and is available for the Superior Court to occupy. In addition, after occupancy, the state's ongoing payment is contingent on the level and quality of the service provided. The service agreement establishes a regime for valuing various types of failures in maintenance or operation of the building. If accumulated failures reach a set amount, the state deducts that amount from its annual payment to the Project Company.

Because the state's annual service payment does not vary to reflect increases in construction costs, the risks that the project is delayed, or will cost more to complete than anticipated, are transferred to the Project Company. If the completed building does not continue to operate as required, the state will reduce its annual payment to the Project Company, which must remedy

the situation in order to receive its expected service payment. Thus, the Project Company continues to bear the financial risk that the building does not perform as agreed.

The service payment would not vary based on the actual costs incurred by the Project Company. Therefore if the Project Company intentionally low bid then there would be no mechanism for such shortfall to be claimed through the service agreement.

The Project Company is most likely to be a special purpose vehicle (SPV) set up for the sole purpose of entering into the service agreement with the AOC. The SPV will enter into three main contracts with its sub-contractors in order to be able to meet the requirements of the service agreement. The terms of these contracts will pass down to the sub-contractors the vast majority of the risks that the SPV has accepted under the service agreement. The three main contracts are:

a. Design-Build (DB) Contract – the DB contractor will enter into a fixed price and time contract to design and build the facility. The DB contract will contain provisions for liquidated damages payable to the SPV as well as a security performance package, which typically includes a parent company guarantee and a letter of credit (LC) for 10% of the contract value. to ensure performance of the DB contractor's obligations;

b. Operations and Maintenance (OM) Contract – the OM provider will enter into a fixed price contract mirroring any indexation and payment mechanism provisions that the SPV will incur through the service agreement. The OM provider will also be required to provide a performance security package which is typically a letter of credit sized to the equivalent of a year's fee under the OM contract. This LC is set to ensure performance of the OM provider's performance under the OM contract;

c. Funding Agreement – the SPV will enter into a long term funding agreement with a senior lender to provide the required funding for the project. The funding will be non-recourse funding meaning that there will be no recourse by the lenders back to the owners of the Project Company. Therefore the security for the project comes solely from the ability of the Project Company and its contractors to perform as required under the service agreement. To protect itself the lender will undertake extensive due diligence on all of the contracts to ensure that the parties are able to manage the risks that they are accepting and that the design build and operations solutions are deliverable.

22. Illustrate protections for the State against PBI Company default before completion of court building.

There are three major aspects of PBI structures that prevent default by the Project Company prior to its completion of the building. First, during the period between the execution of the service agreement and the date the Project Company's financing is in place the Project Company will have engaged contractors and performed work on the project. By the time the financing is obtained the Project Company will have invested significant funds in the project. Further, the state will require the Project Company's chosen design-build contractor to post a letter of credit or guarantee of that contractor's obligations under its contract.

In addition, the lenders to the Project Company are highly motivated to ensure that the Project Company completes the building, because the lenders themselves do not receive a return on their investment unless the Project Company receives its annual payment from the state. The lenders therefore require the Project Company to invest a significant amount of funds into the project as equity, and do not release further funds for construction until an independent certifier establishes that progress on the project justifies a drawdown.

Both the lenders and the state will have specific contractual provisions allowing them to "step in" to the Project Company's position under its various agreements. For example, if the Project Company's design-build contractor is ineffective, or the Project Company itself does not perform, the lenders can "step in" to the contracts and either engage new contractors, or otherwise ensure that the services provided to the state meet the requirements of the service agreement.

23. What are the protections for the State against PBI company default after completion of the building?

The state has extensive protections embedded within the service agreement to protect against Project Company default. These provisions include:

- Step-in rights where the state can step-in and take remedial action in limited circumstances;
- Provisions allowing the state to monitor the performance of the Project Company;
- A payment mechanism to deal with poor performance and to penalize the Project Company for such performance;
- Payment structure that compensates the Project Company based on performance over a long period. The Project Company will use this payment stream to borrow money to design and build the court building. Therefore, if the Project Company defaults the State will only have made payments up to the date of default and will not have paid for the court building outright.
- Ability to replace sub-contractors in the event that the sub-contractors to the Project Company are not performing adequately;
- Termination provisions that deal with termination event of the Project Company.

24. Explain how payment deductions for unavailability of portions of the building would work in a performance based infrastructure contract.

More detailed information on unavailability deductions is provided in Tab 13. The service agreement between the state and the Project Company will set forth the required conditions that areas of the building must meet in order to be considered to meet the availability criteria (for example, these will include building temperatures, accessibility, etc). The building will be sub-divided into areas which will be weighted according to their importance to the AOC and Superior Court. These weightings will be used for monitoring performance and determining whether the space is "Unavailable." In addition, the AOC and Superior Court would also be able make deductions from the service payment if the Project Company does not meet its obligations under the service agreement for facilities management. Performance failures would also be measured by reference to the performance indicators set out in the output specifications contained within the service agreement.

Each level of importance will have its own specific standard dollar amount deduction (index linked) which will be applied for each and every performance failure and which will be subtracted from the monthly payment in arrears.

The payment mechanism may contain a provision whereby if an essential area is unavailable or a certain percentage of the overall floor area (e.g., more than 25% of the total) then the entire court building is deemed to be unavailable and no payment is made. Essential areas could include the sallyport. Similarly, certain areas of the building can be linked together where they are operationally independent, such that if one of the areas is unavailable then it is not practical to use the other linked areas. An example may be linking a video testimony room to a courtroom.

To ensure Project Company is incentivized to take adequate corrective measures, the contract will provide for additional deductions from the performance payment if there are repeated failures.

SCHEDULE COMPARISON:

25. Explain and justify the assertion that the new court building could be occupied 30 months earlier with a PBI Company than with a traditional capital-outlay approach.

AOC's assessment of the likely design and construction schedule indicates that the performance based infrastructure approach would provide the new Long Beach court building thirty (30) months earlier than if the project followed a traditional approach used in state capital outlay building projects.

This time advantage is due to an overlap of CEQA environmental clearance performed by the AOC with early design activities, and fast-track design and construction by the Project Company. Conceptual and schematic design would occur during the PBI proposal stage; once selected, the Project Company would immediately begin design development, then plans and specifications are prepared for sequential bid packages to procure construction contracts in increments as needed for the site work and building assembly. Simultaneous working drawings, bidding and construction is a proven method used in private sector real estate development to avoid cost escalation and to expedite building completion.

The PBI approach to this project could achieve an earlier construction start (compared to the traditional design and construction schedule – see schedule in Tab 12) that is likely to avoid an estimated $34.1 million of construction cost escalation, or about 10% of the total project cost for the proposed new Long Beach court building.

The Project Company would be motivated to use fast-track design and construction since payments by the state will not begin until the Superior Court begins activities in the new building.

OTHER

26. AOC will rerun the model comparing each of the PBI and PSC options under two scenarios: 353,000 sft and 452,000 sft.

The value for money summary can be summarized as:

	7.94% Discount Rate		4.90% Discount Rate	
	PBI Option ($m)	PSC Option ($m)	PBI Option ($m)	PSC Option ($m)
Original Scenario				
PBI – 452,000, PSC – 353,000 sft	440	492	699	731
Value proposition	52		32	
Scenarios				
1. PBI and PSC both 353,000 sft	472	490	750	728
Value proposition	18		(22)	
2. PBI and PSC both 452,000 sft	439	469	700	687
Value proposition	30		(13)	
3. Revised PSC and PBI both 452,000 sft	442	502	702	730
Value proposition	60		28	

NOTES:

1. Reducing the square footage of the PBI option from 452,000 sft to 353,000 sft will reduce the estimated insurance and the corporate tax payable by the PBI Company (the competitive neutrality adjustment in the PSC). There will be a corresponding slight reduction in the PSC to reflect the above change to the competitive neutrality adjustment.

2. The NPV of the original scenario has changed slightly from that in the appendix of the 14 February submission for the 4.90% discount rate scenario. This is because the risk number included originally was based on a discount rate of 7.94% and not 4.90%. The lower discount rate increases the net present cost of the risk drivers in particular the operational costs. The effect of this is an increase in the NPV of the risk from $163 million to $186 million.

Original Scenario – The original scenarios can be summarized as:

a. The PSC has a base size of 353,000 sft and required additional space to be leased, and staffed, by the AOC when the additional courts were required over the life of the proposed PBI project.
b. The PBI has a base size of 452,000 and the additional space over and above the initial 31 courts is leased to both the County and third party users until required by the AOC.
c. The value proposition for the original scenario is $52 million at a discount rate of 7.94% and $32 million at a rate of 4.90%.

Scenario 1 – This scenario can be summarized as both the PSC and the PBI options are both 353,000 sft and both require additional space to be leased from a third party when additional

courts are required by the AOC over the period of the proposed PBI contract. Under both scenarios the real (ie 2008 $ values) costs of construction and operations are considered to be the same. This is a very conservative assumption.

The value for money proposition of this scenario is:

i. At 7.94% discount rate $18 million;
ii. At 4.90% discount rate ($22) million.

Scenario 2 – This scenario can be summarized as both the PSC and the PBI options are 452,000 sft and lease additional over and above the 31 courts to the County and third party users until the space is required by the AOC. As in revised Scenario 1, under both scenarios the real costs of construction, operation and lease revenue are considered to be the same.

The value for money proposition of this scenario is:

i. At 7.94% discount rate $30 million;
ii. At 4.90% discount rate ($13) million.

Scenario 3 – This scenario assumes the same size building as scenario 2, but with the assumption that the PBI option would bring efficiencies, i.e. a lower capital cost than the PSC. The PSC assumes a 10% higher cost for construction and a 15% higher cost for fees. These cost assumptions have been derived from a report produced by the General Services Administration dated March 27, 2007 entitled "Unique to Government Costs" that concluded that public sector projects incur additional costs in the range of 12-18% on fees and 10-15% on construction costs when compared to private sector projects.

The value for money proposition of this scenario is:

i. At 7.94% discount rate $60 million;
ii. At 4.90% discount rate $28 million.

27. Document the projections used to determine the additional judicial positions that are expected to be placed at Long Beach Court between 2012 through 2045.

Information concerning these projections is provided in Tab 5.

SB 82- Ch. 176

SECTION 1.

(a) The Legislature finds and declares all of the following:
(1) The transfer of responsibility for court facilities from the counties to the state requires that court facilities be efficiently and economically provided to the court system.
(2) The State of California stands to benefit from the consideration and implementation of efficient and contemporary methods of developing and managing major capital infrastructure improvements. Significant cost increases in the real estate and construction sectors make it imperative that the state proceed with capital construction in a timely manner to best mitigate those increases.
(3) The costs of maintaining and operating a building over its life span are greater than the initial construction costs, so the control of these maintenance and operations costs must be factored into any responsible infrastructure development method.
(4) Project delivery methods that implement these cost control considerations should include development by an entity that provides all capital activities, including the financing, design, construction, maintenance, and operation of a building. Those methods may include some or all of the following: (A) Putting existing property to a higher and better use and leveraging redevelopment proceeds to reduce the state's cost of new replacement court projects. (B) Combining new court facilities with other appropriate and compatible noncourt uses that would provide a subsidy to reduce the state's maintenance and operation costs. (C) Utilizing competitive bids to give the state the best financing terms and possible subsidies from redevelopment of current court properties and development of new facilities. (D) Using a lease-purchase with the option to acquire any noncourt space for future growth needs.
(5) The Judicial Council has established a detailed, multiyear court facilities capital infrastructure plan to acquire court facilities and provide necessary improvements for the judicial branch in the most economically feasible manner.

(b) In order to implement the findings and declarations contained in subdivision (a), the Legislature hereby enacts Section 70391.5 of the Government Code.

SEC. 60. Section 70391.5 is added to the Government Code, to read:

Judicial Council required to develop performance expectations and benchmark criteria

Section 70391.5. (a) The Judicial Council shall develop performance expectations for court facility proposals, including benchmark criteria for total project life-cycle costs, project cost comparisons to traditional delivery and financing options, project risk assessments and allocations, utility and energy conservation requirements that meet or exceed state standards, and court security operations cost controls and

reduction goals. The performance expectations and benchmark criteria shall be consistent with Chapter 1016 of the Statutes of 2002, Chapter 488 of the Statutes of 2006, and consistent with all current state building practices.

Finance Director and Joint Legislative Budget Committee review

(b) In reviewing any court facility proposal that includes a public-private partnership component, the Director of Finance shall take into consideration any terms in the proposal that could create long-term funding commitments and how those terms may be structured to minimize risk to the state's credit ratings. Following the approval of any court facility proposal of the Director of Finance, the Judicial Council shall notify the Joint Legislative Budget Committee of the performance expectations and benchmark criteria for the proposal at least 30 days prior to the release of initial solicitation documents for a court facility project. If the Joint Legislative Budget Committee does not express any opposition or concerns, the Judicial Council may proceed with the solicitation 30 days after giving that notice.

Legislative Action Note

SB 77, Ch. 171

SB 77 (Budget Act of 2007) provides:

"Notwithstanding any other provision of law, the Administrative Office of the Courts shall gather information for a public-private partnership agreement for the Long Beach Court replacement, specify a process and criteria for developing alternative methods of project delivery, and identify variables that will be used to evaluate the alternative methods of delivery.

Authority for Public Private Partnership

Pursuant to Section 70391.5 of the Government Code, the Judicial Council may enter into a lease- purchase agreement or other appropriate multiyear agreement, together with other related agreements, with one or more entities for the delivery of the new Los Angeles County—Long Beach Courthouse that will provide payments to the entity or entities for the state's proportional share of project costs, subject to notice to the Legislature and the Department of Finance approval that the agreements meet established performance expectations. This provision is contingent upon the execution of an agreement for transfer of responsibility of the existing Long Beach court facility to the state no later than June 30, 2007, and subsequent approval of the transfer of title by the State Public Works Board."

LONG BEACH COURT BUILDING OPERATIONS

The Long Beach court operation handles a variety of litigation types and all criminal matters for the cities of Long Beach, Signal Hill, San Pedro, Wilmington, Harbor City, and a small region of the City of Los Angeles. The courthouse has been determined to be a high-volume court. In 2006, the Long Beach courthouse had the highest monthly magnetometer counts for any district, averaging 109,000 visitors versus the second highest district which averaged 96,000 visitors. Consequently, there is extreme overcrowding entering the courthouse, in the public hallways, and many of the courtrooms. The average number of visitors (including employees) to the courthouse each regular business day and following a holiday are listed below:

Normal Day:..... 3,500 – 4,000 persons
Day following a holiday: ..... 4,000 – 4,500 persons

The highest volume time of day for visitors to the courthouse is between the hours of 7:30 a.m. – 9:00 a.m. and 1:30 p.m. - 2:00 p.m.

The 2006 - 2007 Annual Case Filings Summary for the South District (Long Beach, San Pedro, and Catalina courthouses) are:

Civil – General.....3,499
Limited Civil (excluding Small Claims).....6,269
Small Claims.....5,091
Unlawful Detainers.....4,841
*Felonies.....4,629
*Misdemeanors.....39,932
*Family Law (includes Dissolution, Nullity, and Legal Separation) 3,770
*Juvenile Delinquency.....1,197
*Probate 900
Traffic Infractions.....96,098
Non-Traffic Infractions.....8,958

**** Case types that are heard at the Long Beach Courthouse only.***

The Long Beach courthouse averages 385 felony and 3,327 misdemeanor filings monthly and includes all criminal filings within the South District.

The Long Beach courthouse currently has 27 courtrooms handling the following case types:

- Sixteen Criminal
- Two Juvenile Delinquency
- Two Family Law
- One Traffic
- Two Limited Civil
- Three General Civil
- One Juvenile Traffic

For some courtrooms, defendants in custody are escorted through the same hallways that are often jammed with witnesses, jurors, spectators, and other court users. For most criminal

courtrooms, defendants in custody are escorted through the same hallways utilized by judicial officers and court staff. Juvenile detainees must cross public hallways to reach detention areas and to appear in court.

Juvenile Traffic average caseload is 92 arraignments per day with a 70% appearance rate which is 64 arraignments, on average. Each minor must bring a parent. 124 people appear on an average day (if each minor brings only one parent). Heavy calendars run 150 - 200 arraignments per day with a 70% appearance rate. Calendars include 105 - 140 juveniles and their parents. 210 - 240 people crowd the hallways for arraignment on busy days.

Inoperable escalators and elevators delay the movement of visitors, employees, and jurors throughout the courthouse.

The Traffic (2nd floor) and Criminal (4th floor) Divisions assist approximately 200 - 300 customers per day. On high-volume days and days following a holiday, the lines will run the length of one to two courtrooms. As a result, building transportation is heavily impacted in moving customers to and from these floors and the noise level often impacts court proceedings.
In 2007 approximately 200 jurors (new and in selection) reported each day; however, between January and March of 2008, that number increased to approximately 300 per day. The new court building is being planned to accommodate 400 jurors per day.

Jurors are required to report for jury duty at 7:45 a.m. in order to ensure they have sufficient time to enter the building and reach the Jury Assembly Room in time for juror orientation. Orientation commences promptly at 8:00 a.m. daily. The Jury Assembly Room is located on the 6th floor. Building transportation is heavily impacted in moving jurors to and from the 6th floor.

HIGH-VOLUME COURTROOM OPERATIONS

The existing Long Beach courthouse includes three high-volume courtrooms: Early Disposition and Felony Arraignment, Misdemeanor Pre-trials, and Substance Abuse/DUI. In addition, the Traffic, Domestic Violence and Out of Custody Misdemeanor Arraignment departments are also considered heavily used courtrooms.

The Master Calendar courtroom handles the Early Disposition Program and Felony Arraignments, averaging 75 - 100 felony custody cases per day. The Misdemeanor Custody Arraignment courtroom averages 50 - 75 custody cases per day. However, the custody cages in each courtroom only accommodate 14 prisoners resulting in the overflow of prisoners being placed in the audience seating for their arraignment.

Due to inadequate attorney interview rooms for custodies, prisoners are interviewed through the custody cage in the courtroom or in the jury box.

On busy days and days following a holiday, the prisoners are placed in audience seating and the public is instructed to wait in front of the courtroom.

High-volume misdemeanor courtrooms average 100 - 125 cases per day and up to 150 on busy days and days following a holiday. Due to inadequate seating, some individuals appearing in court must stand in courtroom aisles and in front of the courtroom until a seat becomes available. Accordingly, Judicial Officers are often required to repeat instructions several times.

CURRENT USAGE OF LONG BEACH COURTHOUSE

The Traffic Arraignment and Trial courtroom averages 75 - 100 cases per day. Due to inadequate seating capacity, only individuals appearing in court are allowed in the courtroom and witnesses are required to wait outside. On busy days and days following a holiday, some individuals must stand in courtroom aisles and in front of the courtroom and the interpreter must translate the rights in front of the courtroom.

FUNCTIONAL AND PHYSICAL DEFICIENCIES OF THE EXISITNG LONG BEACH COURTHOUSE

Specific functional and physical problems with the court facility—as well as their impact on all court users—include the following:

Americans with Disabilities Act (ADA) Compliance

- The building does not have wheelchair accessible bathrooms on most floors.
- There is no public elevator access to the sixth floor, which houses the jury assembly room, the cafeteria, and the Office of the Public Defender.
- Access to and from the sixth floor for persons with disabilities is by security guard escort only, using the security elevator.
- Of the 27 courtrooms, none are ADA compliant.
- Public Impact - In January 2005, prospective jurors with disabilities were notified to either postpone jury service or request it in another court facility, as the security elevator used to transport jurors to the sixth floor jury room was unavailable until May 2005.

Seismic Deficiencies

- Two independent surveys, one by the County of Los Angeles and one by the State of California, concluded that the Long Beach courthouse would collapse in the event of a medium-sized earthquake from a nearby fault.
- The last two earthquakes in the vicinity have caused a six-inch separation between the east wing and west wing of the courthouse.
- Over time rainstorms, coupled with high winds, have caused further movement and damage in the east wing. New leaks have developed and court files have been damaged.
- The County of Los Angeles is currently planning a limited retrofit at an estimated cost of $13.9 million. After the proposed retrofit is completed, it is estimated that the courthouse would remain standing long enough to evacuate but could not be re-occupied following a medium-sized earthquake from a nearby fault.
- Public Impact - If the courthouse is closed, all of the cases would necessarily have to be transferred to remote locations for adjudication. There is presently no single courthouse in Los Angeles County large enough to accommodate transfer of all of the criminal cases assigned to the South District.

Inoperable Custody Elevator

- Up to 225 prisoners each day come through the Long Beach courthouse, where they are moved within hallways used by judges, staff, and the general public.

- The elevator used to transport prisoners is not operable approximately 40 percent of the time.

- When the custody elevator is not operable, the Sheriff's deputies are required to load and unload the buses with prisoners in an unsecured parking lot behind the building.

- The security elevator normally used by judges and court employees is used for the transport of prisoners. Judges and employees are required to use public elevators, escalators, and stairways, thus compromising security.

- When the security elevator is being used to transport prisoners, the prisoners must be walked through hallways with access to judge's chambers, jury deliberation rooms, and unlocked doors to courtrooms.

- Public Impact - When the security elevator is being used by the Sheriff's deputies, there is no access to the sixth floor for persons with disabilities.

Inadequate Custody Lockup Area

- The in-custody jail cells are located on two floors of the courthouse, which requires additional Sheriff's deputies to manage the inmates.

- There are not enough individual holding cells to segregate gang members, informants, and other "keep-aways" from the general population of inmates, which results in frequent attacks on prisoners by other prisoners.

- Attorney interview areas are used to house "keep-aways," thus eliminating private areas for attorneys to interview criminal defendants. Attorneys are forced to interview their clients in the busy courtrooms, where the cases are scheduled to be heard, as shown in Figure 1.

- Juvenile prisoners are taken to courtrooms through public hallways, which are often filled with family members, witnesses, and rival gang members. Figure 2 shows a typical court business day.

FIGURE 1
Defense Attorneys Interviewing Felony Prisoners

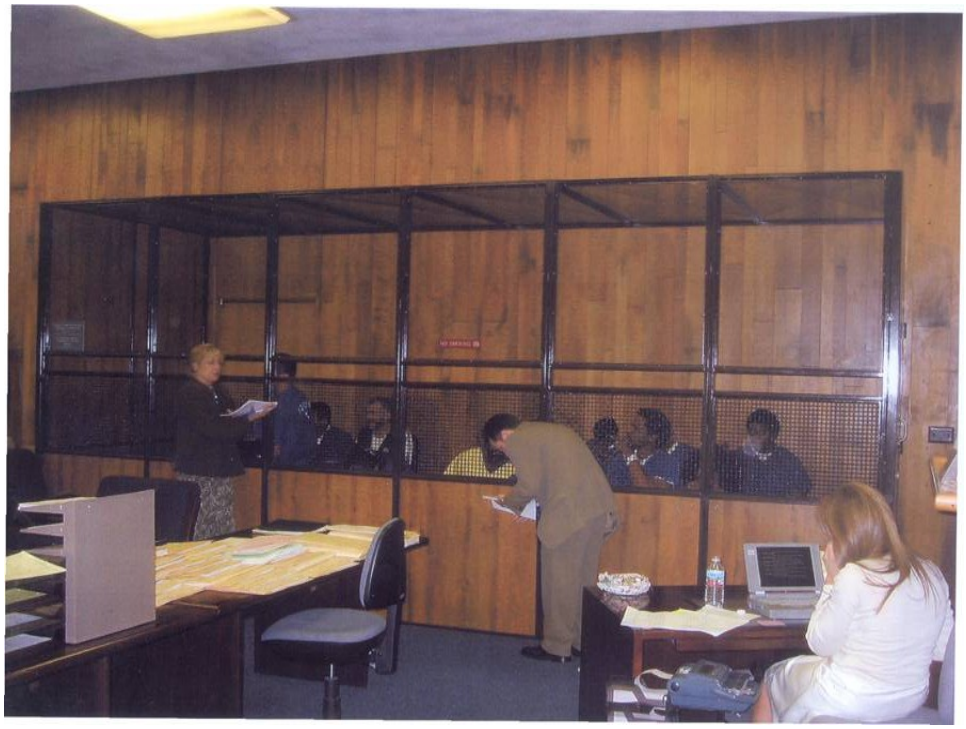


FIGURE 2
5th Floor Public Hallway—Criminal and Juvenile Delinquency Courts

- Public Impact – Delays commencement of court hearings, which affects court staff, witnesses scheduled to testify, increases the security risk for all persons, and increases security costs.

Defective Public Elevators and Escalators

- In January 2005, a juror, while serving jury duty on the sixth floor suffered a heart attack that proved to be fatal. Because the sixth floor is inaccessible by elevator, the emergency response team was delayed in reaching the juror. The County Board of Supervisors voted shortly thereafter to request a full investigation into the matter.

- Frequent elevator and escalator breakdowns pose a hazardous condition, exposing the court and the county government to potential liability.

- Of the 10 escalators in the building, approximately 70 percent are non-functioning on a daily basis, as shown below in Figure 3.

FIGURE 3
Typical Out-of-Service Escalator

- The Office of Risk Management has reported that 26 percent of all escalator injury claims occurring in the Superior Court of Los Angeles County arise from accidents in the Long Beach court building.

- Approximately 4,800 people per day enter the Long Beach court building.

- The frequent breakdown of the escalators causes overcrowding in the lobby area, which in turn delays entry into the courthouse and results in long lines outside the building. Figure 4 below depicts this regularly occurring condition.

FIGURE 4
Public Entrance Line—Caused by Facility Conditions

- It is not uncommon for at least one of the three public elevators to be regularly inoperable. There are some occasions when all public elevators have ceased functioning.

- Public Impact - Attorneys, litigants, witnesses, and visitors are required to use overcrowded elevators or climb up to 10 flights of stairs to make appearances in court, or to access various administrative offices.

Inadequate Number of Courtrooms

- There are only 27 courtrooms available in this building, eight of which are dedicated to handle civil or family law cases.

- Some of the existing courtrooms were created in spaces designed as clerks' offices. There are structural support columns in the center of the courtroom, as shown in Figure 5. Also, the judges' chambers do not have restroom facilities.

FIGURE 5
Typical Courtroom with Obstructed Views

- A modular building, installed in the parking area behind the courthouse, serves as a traffic court. This building has leaks, mold, and termite infestation, as shown in Figures 6 and 7.

FIGURE 6
Modular Building Water Damage to Roof/Ceiling

FIGURE 7
Modular Building Water Damage to Floor

- The traffic court in the modular building is in the parking area, while payments for traffic fine are received on the second floor of the main building.

- Public Impact - The courtrooms are too small to accommodate all of the litigants and witnesses. The public is required to wait outside each courtroom for their turn to enter and have their case heard by a judge or commissioner. If, while waiting in the hallway, they miss hearing their name called, a warrant may be issued, a case dismissed, or a default judgment entered. Often, attorneys, litigants, witnesses, and even jurors are required to travel to distant courthouses to have cases adjudicated.

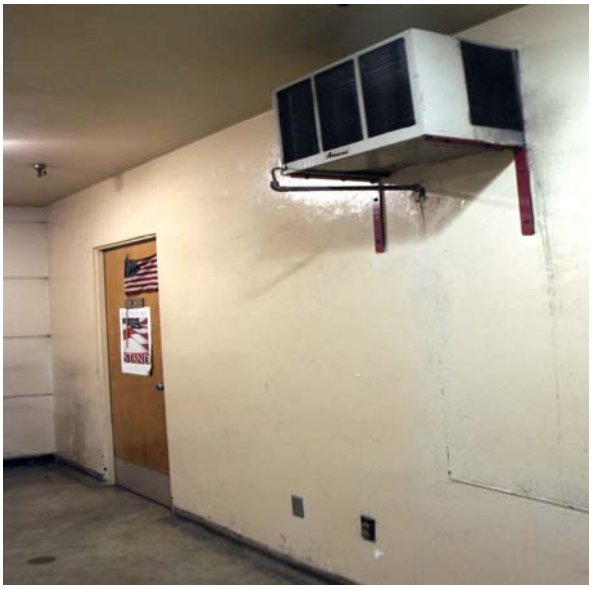
Inadequate Space for Support Functions

- Due to lack of space, private corridors and mechanical/electrical rooms are used for storage. The public lobby in the Office of the Public Defender and the hallways leading to the attorneys' offices are lined with filing cabinets and boxes of files, as shown in Figure 8.

FIGURE 8
Lobby of Public Defender's Office

- By installing makeshift air conditioning units, spaces originally designed as janitorial supply rooms have been converted to office space, as shown below in Figure 9.

FIGURE 9
Lack of Office Space—Makeshift Conversions



- Long lines, as shown below in Figure 10, are a common occurrence at clerks' counters, as the public attempts to pay traffic fines, file documents, and access criminal and civil case files.

FIGURE 10
Long Lines at Clerk's Counters—Caused and Exacerbated by Lack of Space

- Public Impact – Attorney, litigant, and visitor frustration is apparent—owing to the waiting required to transact court business—which adds to the already difficult task faced by employees of processing matters for litigants and attorneys.

Antiquated Systems

- The heating and cooling systems are 45 years old and were never designed to service the increased number of people who use and visit the building on a daily basis.

- The addition of computers and other electrical devices causes frequent power outages, by overtaxing the outdated electrical system.

- Flooding in courtrooms, jury deliberation rooms, and in the jail cell area is nearly a daily occurrence, as a result of leaking plumbing and overflowing toilets.

- Constant leaks from drinking fountains have caused their removal from nearly every courtroom and jury deliberation room. Bottled water is now provided at the individual expense of the judges.

- Public Impact - In January 2005, one courtroom and the office of the District Attorney closed due to the failure of the air conditioning system. In 2005, one courtroom had to be closed due to leaks and mold.

General Lack of Maintenance

- Portions of the ceilings in several courtrooms have fallen down, and even the repair patches have failed, as shown below in Figure 11.

FIGURE 11
Typical Ceiling Tile—Resulting from Poor Maintenance

- Vermin infestation is rampant. Rat traps are a permanent fixture in the courtrooms and offices throughout the building.

- The mirrors and walls in the public restrooms are covered in graffiti, as shown in Figure 12. The furniture in the public hallways and jury waiting areas are also covered with graffiti and markings, as shown in Figure 13.

FIGURE 12
Typical Public Restroom Mirror

FIGURE 13
Typical Public Seating

- The tiles in the public restrooms are broken or have fallen from the walls.

- Public Impact – A public perception of less-than-professional service and accommodation is projected by the inadequate appearance of the Long Beach court building. As a result of this dismal work environment, the public's perception of professionalism, as well as employee morale, is increasingly diminishing.

Long Beach Press Telegram

Juror death inquiry ordered

Officials to review delay in emergency action due to repairs.

By Wendy Thomas Russell, Staff writer

Tuesday, January 18, 2005 - LONG BEACH — The Los Angeles County Board of Supervisors voted unanimously Tuesday to request a full investigation into the circumstances surrounding the fatal collapse of a prospective juror at the Long Beach Courthouse. And it asked for recommendations about "how to prevent another tragic medical occurrence."

The 5-0 vote came six days after the 52-year-old man suffered an apparent heart attack on the sixth floor of the courthouse while serving jury duty. Emergency workers called to the scene encountered problems getting to the man because of a broken elevator and confusion about the best route to the hard-to-access sixth floor.

In his motion, Supervisor Don Knabe asked the county's chief administrative office, Sheriff's Department, internal services department and Superior Court to review emergency response plans that "allow for the most efficient movement" of emergency crews throughout the building.

He said court staff should be trained in such plans, and "backup access paths" should be mapped to address cases where "maintenance issues may present a problem to safety personnel."

The departments were directed to complete the investigation and report back to the board within the next 30 days.

It took paramedics two minutes to get to the courthouse Jan. 12 after receiving a dispatch regarding the fallen juror. It then took seven minutes to get to the sixth floor because the public elevators run only to the fifth floor, and the judge's elevator the one normally used in emergencies was broken at the time.

The space plan for the new Long Beach courthouse includes 31 courtrooms and expansion space for additional courtrooms to be provided for future growth. The expansion space will be leased to non-court users until needed to accommodate additional courtrooms. The new Long Beach courthouse will be the main courthouse in the South District area of the Superior Court of California, County of Los Angeles (LA Superior Court). The Long Beach area is where the greatest need is and will continue to be for case processing for the South District and therefore growth in court operations should be accommodated in the new Long Beach courthouse.

To determine how many more courtrooms would be needed to serve the South District area, AOC collaborated with staff of the LA Superior Court and used data from the AOC Office of Court Research and the Facilities Master Plan (master plan) for the LA Superior Court. The following assumptions were made:

1. The facility will be completed in 2011 and the developer entity will be responsible for operations and maintenance of the facility for 35 years.
2. The new courthouse should accommodate courtroom growth through the year 2044, which is two years prior to when the service payments from the state to the developer entity will cease.
3. A courtroom is needed for each projected future Judicial Position Equivalents (JPEs).[1]

The AOC Office of Court Research uses a methodology referred to as the Judicial Workload Assessment to assess need for additional judgeships using judicial workload standards initially developed from the California Judicial Needs Assessment Project in which the National Center for State Courts provided their expertise. The judicial workload standards are applied to court caseload data to develop currently needed JPEs figures for each court. The AOC Office of Court Research has also projected future need for JPEs to the year 2029 based on master plan caseload projections, assuming the first set of 150 new judgeships are all funded by 2009.

AOC staff extrapolated the 2029 AOC Office of Court Research projections for the entire LA Superior Court to the year 2044, which resulted in a projected need of an additional 219.6 JPEs for the entire LA Superior Court from 2010 to 2044. This total also includes the four new judgeships included in the 31 courtrooms planned for the new courthouse.

The master plan indicates that historically 6% of all of the LA Superior Court's JPEs are assigned to the South District. The LA Superior Court concurred that this figure was a sound basis for determining future South District JPEs allocations. By applying this historical percentage to the projected number of JPEs for the LA Superior Court, the South District should have an additional 13.2 JPEs by 2044, which is 6% of the total 2044 projected 219.6 JPEs for the LA Superior Court.

[1] JPEs are defined as the total authorized judicial positions adjusted for vacancies, assistance rendered by the court to other courts, and assistance received by the court from assigned judges, temporary judges, commissioners, and referees.

Given that four new judgeships (i.e., two from SB 56, one from AB 159, and one from proposed SB 1150) are already included in the 31 courtrooms to be finished for court use when the new courthouse is completed, these must be subtracted from the 13.2 JPEs, which results in a 2044 need for 9.2 (rounded to 9) JPEs for the South District. Nine additional courtrooms are therefore projected to be needed by the year 2044 to support these nine JPEs. The calculations used to develop this projection are presented below:

					AOC Office of Court Research JPE Projections [1]				Projections Extrapolated to 2044								
	Current JPE	Total Assessed JPE Need (FY 06-07 to FY 08-09)	2009 JPE If Total Assessed Need was Funded by FY 09-10	Avg. of 2012-2022 Master Plan Projected Growth	2014	2019	2024	H+(H*E) 2029	I+(I*E) 2034	J+(J*E) 2039	K+(K*E) 2044	Net Increase in JPE: 2010–2044	% of Total LA JPE Assigned to South District (from Master Plan)	Total Projected JPE in South District	Total New Judgeships Applied to LB Project (2 SB 56 + 1 AB 159 + 1 SB 1150)	Additional Projected JPE to LB Project - Future Growth
	FY 05-06											L-D		M*N		O-P
County	B	C	D	E	F	G	H	I	J	K	L	M	N	O	P	Q
Los Angeles	602.4	24.0	626.3	4.53%	648.5	675.3	708.5	740.6	774.2	809.2	845.9	219.6	6.00%	13.2	4.0	9.2

Footnote to the table:

1. JPEs projections for years 2014 through 2029 are based on application of judicial workload standards to caseload projections by case type from the 2003 Facilities Master Plan for the LA Superior Court. Growth in JPEs from 2014 to 2019 is 4.14 percent, from 2019 to 2024 is 4.92 percent, and from 2024 to 2029 is 4.53 percent.

To address this future need, the project plan for the new court building includes one floor that can be remodeled in the future to accommodate courtrooms for new judges. Depending on the final configuration of the building, this extra floor would accommodate six or eight of the nine courtrooms projected to be needed by 2044.

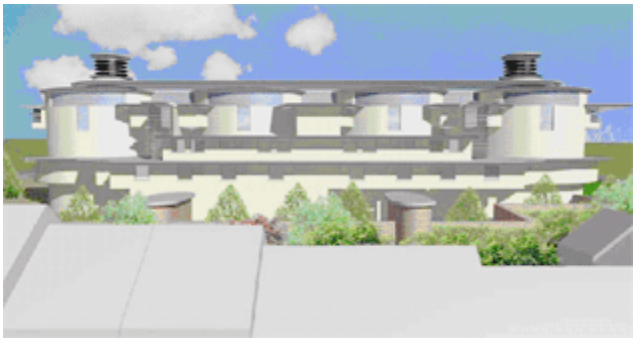
UNITED KINGDOM SELECTED COURT PROJECTS

East Anglia Courts

Provision of new court accommodation in East Anglia, including new Crown Court centres in Ipswich (5 courtrooms) and Cambridge (3 courtrooms).
Status: Contract with Modern Courts (East Anglia) Ltd, a consortium with Mowlem PLC and Innisfree as equity partners, Design, Build, Finance, Operate, and Maintain (DBFOM) agreement was signed October 2002. Operations have successfully commenced on both sites June 2004.
Capital value £25m.

Exeter Combined Courts

Provision of new combined court centre with 4 criminal and 1 civil courtrooms and 4 District Judges' civil hearing rooms. The building will also house the Exeter Probate Sub-Registry and the Court Service Group manager's office. The contract won the award for Best Accommodation Project Below £20 million in public private finance Awards 2003.



DBFOM Contract with Enterprise Civic Buildings, a consortium made up of Alfred McAlpine, Sodexho and HSBC Infrastructure Fund Management, signed November 2002.
Building completed in April 2004.
Capital value £15m.

Hereford and Worcester Magistrates' Courts

Contract for the provision of four new serviced courthouses in Kidderminster, Hereford and Worcester, all of which are in use, and the refurbishment of the courthouse in Redditch. Private sector finance at risk.

Status: Contract signed February 2000; Buildings completed November 2001
Capital value: £25m.

Avon and Somerset Magistrates' Courts

Scheme to procure DBFOM for suitable accommodation for use by the Avon and Somerset Magistrates' Courts. Joint scheme with the Home Office for the provision of accommodation for the local Probation Service and with Bristol City Council for the provision of accommodation and a courtroom for the local Coroner.

Status: Contract signed August 2004; completed November 2005

Capital value £26m (£32m total)

CANADA COURT PROJECT

Durham Courthouse, Ontario, Canada

http://www.infrastructureontario.ca/en/projects/jus/durham/profile.asp

In March 2007, the province of Ontario entered into a project agreement with a private partner to consolidate Superior Court and Ontario Court justice services currently delivered from eight locations into one modern facility. In addition, the building's design will conform to LEED "Silver" certification standards, with an emphasis on energy management and conservation.

Under the terms of the agreement, the private partner will: design and build the 33 courtroom courthouse; finance the construction and capital costs of the facility; obtain a third-party independent certification that the facility is built to specifications; provide the facility management, lifecycle maintenance and other facilities management services for the new centre; and ensure that the buildings meet the conditions specified in the project agreement (DBFOM). In addition, key risks are transferred to the private partner. The net present value delivery cost is C$334M financed 100% by the private partner. Construction that started on June 2007 is scheduled to be completed by late 2009. Once the courthouse is open, the Province will make annual payments for 30 years, based on performance requirements defined in the project agreement. If standards set out in the agreement are not met,

there will be financial deductions. An independent assessment determined that this partnership will save the taxpayers C$49M, or an estimated cost savings of 11.47% when compared to the traditional delivery model.

AUSTRALIA COURT PROJECTS

County Court – Victoria

The new County Court building is an integrated complex in the heart of Melbourne's legal precinct at the corner of Lonsdale and William Streets. It is a landmark building combining modern court design principles with state-of-the art technology.

It is Australia's largest court complex and was the first major social infrastructure project under the *Partnerships Victoria* policy. The new facility opened on 31 May 2002, on-time and on-budget.

The County Court is the State's busiest trial court, handling most criminal trials and a very significant workload of civil cases. It has 54 courtrooms, (including an additional 8 courtrooms commissioned in 2008) a jury pool area which can accommodate up to 400 people, and attractive public spaces. The new County Court will reduce waiting times for court appearances, provide better security, reduce court costs and improve facilities for jurors, victims, the public and the legal community.

All court services integral to the administration of justice will remain in government control in accordance with *Partnerships Victoria* policy that core services should be provided directly by Government. The Liberty Group services are delivered in partnership with government agencies including the Department of Justice, County Court, Juries Commissioner's Office, Victoria Police, Victorian Government Reporting Service, and Corrections Victoria.

The contract with the Liberty Group is to design, build, finance and provide building management services DBFOM, security and information technology systems. The Liberty Group has a 99-year lease over the crown land on which the court is situated. Capital Value: $195m (Net Present Value Oct 2000)

CBD Courts Project – Western Australia

The CBD Courts Project will provide world-class facilities to court users in Western Australia. Featuring the development of a $195 million District Court building which will also house Supreme Court criminal jury trials, the 131,000 SF project will combine public and private sector expertise to create an innovative and excellent court development. Western Liberty Group and the State of Western Australia have collaborated through a Public Private Partnership for DBFOM agreement. Building is scheduled to be completed on June 2009.

HP Pavilion, California, USA

The HP Pavilion at San Jose opened in September 1993. Prior to the opening, in 1990, the San Jose City Council established the non-profit San Jose Arena Authority to oversee the operation and management of the building and to act as its liaison to the San Jose community This project is a Design-Build-Finance-Operate-Maintain (DBFOM) partnership under which the private partners designed and built the structure and, and through a concession contract, is responsible for operation and maintenance until 2018. The City of San Jose retains ownership of the arena. The City and its private sector partner both contributed to financing the $162.5 million project. The project was completed in 2 years.

Abbotsford Regional Hospital and Cancer Centre, British Columbia, Canada
http://www.partnershipsbc.ca/files/projectabbotsford.html

Under a design-build-finance-operate (DBFO) partnership, a new 300 bed, 645,800 sq. ft. public hospital and cancer treatment center will be built to replace the existing functionally outdated MSA Hospital. The new hospital and cancer center will have twice as many professional and health service staff as the current facility, and will offer the local community much needed and improved access to a greater range of services in an environment that is designed to be supportive of both patients and staff. The British Columbia Ministry of Health and its public sector health care partners joined with a private partner to design, build, finance and maintain the state-of-the-art regional hospital and cancer center. Once the hospital and cancer center is open, the private partner will provide nonclinical facility management services for 30 years. All clinical services will be provided by the public sector.

- Total project capital costs are C$355M, 100% privately financed.
- The lifetime project cost over 30 years will be C$424M, producing an expected benefit to taxpayers of C$39M when compared to the traditional method.
- The private operator will not receive payments until the facility is complete; at that time the Province will begin performance-based payments that take into account facility availability and service quality.
- Construction is on time and on budget; the facility is expected to open for patients by the end of summer 2008.

Global Court Projects						
#	Country	Project	Category	Region		Capital Value
1	UK	Derbyshire Magistrates' Courts	PFI	Derbyshire	£	31
2	UK	East Anglia Courts	PFI	Suffolk	£	25
3	UK	Exeter Combined Court	PFI	Devon	£	15
4	UK	Hereford and Worcester Magistrates Court	PFI	Worcestershire	£	25
5	UK	Humberside Magistrates Court	PFI	East Riding of Yorkshire	£	19
6	UK	Manchester Magistrates Courts	PFI	Greater Manchester	£	30
7	UK	National Probate Records Centre	PFI	West Midlands	£	11
8	UK	Sheffield Family Hearing Centre	PFI	South Yorkshire	£	5
9	UK	A19 Dishforth to Tyne Tunnel DBFO	PFI	North East Wide	£	29
10	UK	British Transport Police - New Police Stations	PFI	London Wide	£	13
11	UK	Ilkeston Police Station	PFI	Derbyshire	£	3
12	UK	Northern Ireland Courts New Court Complex - Laganside	PFI	Belfast	£	28
13	UK	Northern Ireland Courts IT & Telecomms	PFI	Northern Ireland Wide	£	30
14	UK	Fife Schools PPP1	PFI	Fife	£	40
15	UK	Avon & Somerset Magistrates Courts	PFI	Somerset	£	59
16	UK	UK Supreme Court - Middlesex Guildhall	PPP	Westminster	£	37
17	UK	Gwent Healthcare NHS Trust - Monnow Court	PFI	Monmouthshire	£	4
18	UK	Health & Safety Executive - Redgrave Court Headquarters	PFI	Merseyside	£	57
19	UK	London Borough of Croydon - New for Old Sheltered Housing Project	PFI	Croydon	£	44
20	Canada	Durham Consolidated Courthouse	PPP	Ontario	C$	377
21	Canada	Waterloo Region Courthouse	PPP	Ontario		pre-tender
22	Australia	County Court	PPP	Victoria	A$	195
23	Australia	CBD Courts Complex	PPP	Western Australia	A$	195

EVALUATION OF OPTIONS

PROJECT DELIVERY OPTION	A	B	C	D
QUALITATIVE CRITERIA	**State Bond Financing Lease Revenue Bond** **Design-Bid-Build;** **Court space only**	**State Bond Financing Lease Revenue Bond** **Design-Build;** **Court space only**	**State Bond Financing Lease Revenue Bond** **Design-Build;** **Court and County justice offices**	**Performance Based Infrastructure** **Court spaces, County justice offices & commercial office space**
Ability to meet future demand – based on AOC/Superior Court demand estimates up to 2044. Potential for future disruption to Court services.	No ability to meet future expansion within this building option. Expansion would require the lease of additional space from a 3rd party or addition to the new facility	Limited ability to meet future expansion within this building option. Expansion would require the lease of additional space from a 3rd party. DB option could provide more innovative solutions to design of the facility	Some ability to expand into the County space but dependent on the ability of the AOC to displace the County. May not 5be feasible to expand into the space on a phased basis. DB option could provide more innovative solutions to design of the facility	Expansion opportunities exist within the scope of the new building for the Court to expand into on a phased basis as required. DB linked with finance and operations likely to provide more innovative solutions to design of the facility
	Score: 0	Score: 1	Score: 3	Score: 4
Timing of availability of new facility	Construction not due to commence for roughly 3.5 years due to the capital-outlay process	Construction not due to commence for roughly 3.5 years due to the capital-outlay process	Construction not due to commence for roughly 3.5 years due to the capital-outlay process	Earlier delivery is possible as AOC will not be required to wait for availability of public sector capital and legislation is in place to facilitate the transaction; Overlap CEQA and design; Fast-track construction due to the incentive mechanisms in the PBI contract
	Score: 2	Score: 2	Score: 2	Score: 4

EVALUATION OF OPTIONS

Ability to offset cost through private sector income generation	Limited to small amount of retail space	Limited to small amount of retail space	Greater due to County space being included with small amount of retail space	Maximizes the opportunity of the private sector to provide additional space for 3rd party rental and retail space
	Score: 1	Score: 1	Score: 3	Score: 4
Integration of design, construction and lifecycle	Limited due to the lack of full integration of design and lifecycle elements; funding for major replacements not included	Greater ability to integrate of design and lifecycle elements with the Design-Build	Greater ability to integrate of design and lifecycle elements with the Design-Build	Integration of design and operations through output specifications and performance based payments. Lifecycle investment will keep the building condition in a high standard over the Project Term.
	Score: 1	Score: 3	Score: 3	Score: 5
Risk transfer opportunities	Significant risk retained by public sector	Greater ability to transfer Design and Build risks to private partner through integrated DB contract	Greater ability to transfer Design and Build risks to private partner through integrated DB contract	Maximises opportunities for risk transfer of obligations for designing, building, operating and financing the entire facility through the PBI agreement and the payment mechanism
	Score: 2	Score: 3	Score: 3	Score: 5
Improved Facilities Management Service performance	Limited ability to compel good performance on Facilities Management services only. Operations, maintenance and replacement services separate – more contracts	Limited ability to compel good performance on Facilities Management services only. Operations, maintenance and replacement services separate – more contracts	Limited ability to compel good performance on Facilities Management services only. Operations, maintenance and replacement services separate – more contracts	Full availability and performance based regime. Single point of contact.
	Score: 2	Score: 2	Score: 2	Score: 4

EVALUATION OF OPTIONS

Co-location of County space – Related justice agency offices within the building provided to improve work flows	N/A	N/A	Court operations streamlined from co-location with the County justice agencies	Court operations streamlined from co-location with the County justice agencies; Future expansion in building improves Court operations
	Score: 0	Score: 0	Score: 3	Score: 4
Union/Labor issues	No impact	Little impact	Little impact	PBI transaction has the potential to give rise to union and employee issues
	Score: 5	Score: 3	Score: 3	Score: 1
Complexity of transaction and documentation	Simple well understood contract method used often for State facility procurement	Fairly simple documentation and often used contracting method for State procurement	Fairly simple documentation and often used contracting method for State procurement complicated slightly with inclusion of County	Novel procurement method likely to be seen as complex
	Score: 5	Score: 4	Score: 4	Score: 1
Total	18	19	26	32

Scores:

0	1	2	3	4	5
No outcome	Very poor outcome	Poor outcome	Fair outcome	Good outcome	Very good outcome

Market Conditions:

The original assumption was that the existing court property had likely potential for redevelopment to high-rise residential condominiums. However in Long Beach, the recent absorption rate for new rental apartments or condominiums is quite limited, and several proposed projects on attractive sites in downtown have been canceled because of the lack of a ready market. Further the financing for high-rise residential construction in this market is no longer available. Our real estate consultants have determined that the highest and best use is not high-rise residential unless extraordinary subsidies and considerations would be provided by the City.[1]

The existing court property is zoned for intuitional uses, and is within the civic center, surrounded by the city's police headquarters, Long Beach City Hall, and a U.S. government office building. Views to the Pacific Ocean are blocked by recently constructed high-rise buildings. These surrounding buildings make the existing court site more valuable for non-residential development.

The Director of the City of Long Beach Redevelopment Agency (RDA) has stated that the City's long range plan is to replace the existing City Hall with a new building on the civic center block, and that acquiring the existing court property would support and further those plans. Presumably because of this self-interest, the city would not provide the subsidies and considerations footnoted below, which would be necessary for private redevelopment of the site to high-density residential.

While the city appears to be a motivated "buyer" for the existing court property, this asset would be less attractive or valuable to a developer selected to provide the new court building because of the lack of a current market for redevelopment. Further, Ernst & Young believes that the addition of redevelopment of the existing property to the PBI Project Company's responsibilities would not enhance the attractiveness of the PBI project, and might not return direct value to the state.

Property Exchange and Site Acquisition Approach:

The AOC is currently in negotiations with the City of Long Beach and the RDA regarding a potential site for the new Long Beach court building. The RDA has offered to convey title to two full city blocks plus a portion of a secondary street on West Broadway Avenue (approximately one block from the existing courthouse and parking structure), plus a financial contribution, by the City, toward development of the new court building, in exchange for title to the existing court property on West Ocean Boulevard.

[1] Waiver of building permit fee; deferral of real estate taxes; rezoning of the site from institutional to high-density residential; increase in allowable height and site coverage; and reduction in on-site parking requirements. The City has not indicated willingness to re-zone the site or to make these concessions.

Attributes of the preferred site and proposed property exchange:

1. Site is bounded by West Broadway, Maine Avenue, West 3rd Street and Magnolia Avenue, in Long Beach CA (5.917 acres). A portion of Daisy Ave within the boundaries of the site will be vacated.
2. Site is within the downtown civic center area, nearby the city police headquarters, the federal building and the City Hall, thereby enhancing local city planning efforts for an improved institutional civic center core.
3. Site is accessible without driving for many nearby justice partners offices, and when driving, it is located directly off the 710 freeway.
4. Site (#1 on the map) is one block from the existing court parking structure (#2), title to which will be transferred from the county to the state. This existing structure will then continue to provide parking for court staff, jurors, justice partners and the public using the new court building.
5. Utility existence and capacity is available at the site, and generally known to be sufficient.
6. Site location would not change the current distance for transportation of in-custody defendants from the county jail, and surrounding streets are sufficient for the anticipated Sheriff's Department bus traffic. Site location does not change existing vehicle traffic patterns.
7. Site is served by the public bus system and is two blocks from the LA Metro Blue Line train serving downtown Los Angeles, LAX, and the remainder of the commuter rail system of Los Angeles County. Nearby amenities, such as restaurants, offices, convenience retail, hotels, and recreation are within walking distance of the site.
8. Site is owned by the RDA. The RDA is offering an exchange of this 5.917 acre site on West Broadway for the 3.773 acre existing courthouse property on West Ocean Boulevard (#3 on the map).


1
2
3
Site of New Court Building
Existing Parking Structure
Existing Court Property

Ernst & Young Advisory Inc.
Pacific Centre
700 West Georgia Street
P.O. Box 10101
Vancouver, BC V7Y 1C7
Tel: 604 891 8200
Fax: 604 899 3530
www.ey.com

Mr. William Vickrey
Administrative Director of the Courts
Judicial Council of California
Administrative Office of the Courts
455 Golden Gate Avenue
San Francisco
CA 94102 – 3688

05 June 2008

Dear Mr. Vickrey:

SUMMARY

Ernst & Young Advisory Inc. ("Ernst & Young") has undertaken a financial analysis of the proposed new Long Beach Court Building Project (the "Project") which compares the likely financial outcomes of the Project under both a Stated financed route and a PBI procurement route. The results of this analysis show that, using assumptions similar to other jurisdictions that utilize the PBI procurement methodology, it is reasonable to expect that the PBI procurement route could provide a better value for money solution to the State than a more traditional State financed route.

One of the components of the financial analysis is a project specific quantified risk assessment that assigns monetary values to risks. The risk assessment methodology used in the analysis is consistent with generally accepted industry practice for PBI / PPP and other transactions in numerous jurisdictions around the world including many states in the US and the US Federal government. The monetary value of risk was determined through a review of risk factors by a project team comprising of architects, engineers, cost estimators, construction project managers, financial advisors, legal advisors and risk managers, all experienced with large building development.

The monetary value of risk determined by the project team, and used in the financial analysis of the Project, is within a reasonable range when compared to risks quantified in similar projects in other jurisdictions.

BACKGROUND AND ANALYSIS

Ernst & Young has been engaged by the Administrative Office of Courts ("AOC") to provide strategic, financial and business analyses, advice and consulting services on the establishment of a public-private partnership ("PPP")[1] to deliver a new courthouse for the Superior Court of California, County of Los Angeles, in Long Beach, and potentially other future courthouse projects. Ernst & Young was selected [2]following a competitive request for proposal ("RFP") issued on July 13, 2007.

In accordance with California Government Code § 70391.5 the AOC provided a submission to the Department of Finance on February 14, 2008 requesting its approval for AOC to commence the

[1] Public Private Partnerships ("PPP") are also known as Performance Based Infrastructure ("PBI") in California
[2] We have attached as Appendix 4 to this letter a copy of our credentials and awards that were evaluated as part of the July 13, 2007 procurement process.

procurement process for the Project under a PBI procurement route. Approval from the Department of Finance was received on April 1, 2008 and following this the AOC provided similar information to the Joint Legislative Budget Committee ("JLBC") on April 4, 2008. In accordance with the policy of the JLBC, the Legislative Analysts' Office ("LAO") has reviewed the April 4, 2008 submission and has raised some questions.

In order to assist the AOC in providing a response to the LAO and JLBC, I have set out below additional information and background material on the financial evaluation undertaken by Ernst & Young and the Project team.

Under the California Government Code § 70391.5, the AOC is required to develop "performance expectations and benchmark criteria" for the Project that will be used in the evaluation of the Project and the proposed PBI procurement. As part of our role in advising the AOC on the Project we have worked with the Project team to develop these criteria. In doing so we have undertaken a financial analysis of the Project comparing the likely financial outcomes of the Project under both a traditional State financed route and a PBI procurement route.

The results of this analysis show that, using assumptions similar to other jurisdictions that utilize the PBI procurement methodology, it is reasonable to expect that the PBI procurement route could provide a better value for money solution to the State than a more traditional State financed route. In arriving at this conclusion we have used assumptions and methodologies used by numerous governments around the world and in particular:

Financial Analysis Methodology

- In undertaking the financial analysis we have used a methodology that is commonly employed by most jurisdictions that utilize PBI / PPP. The key features of this methodology can be summarized as:
    - For each of the procurement options analyzed (that is the PBI and traditional state financed option) a financial model is created that is a mathematical representation of the likely costs that the AOC would incur under each of the options.
    - In the case of the analysis of the traditional state bond financed option and the PBI option two separate models were prepared:
        - Firstly what is commonly known as a Public Sector Comparator ("PSC"). The PSC is the financial model constructed for the traditional state bond financed option. The PSC assumes that the AOC would enter into a design, bid, build procurement process for the Project, would utilize state bond funding for the capital costs and undertake all operations and maintenance itself; and
        - Secondly a "shadow bid" which is a PBI financial model prepared to estimate the likely annual cost that the AOC would have to pay to a PBI partner to design, build, finance and operate the Project for a predetermined period.

- In assessing whether the PBI option is likely to provide greater value for money to the AOC the net present value ("NPV") of each of these two models was calculated and compared.

- The core inputs into the financial model include an estimate of all costs that the traditional or PBI procurement options would incur and that are comparable between the options. In the case of the Project this would include all costs relating to:

    - Design and construction of the facility.

    - Financing the costs of design and construction including both debt servicing, debt set up costs and equity returns[3].

    - Operation and maintenance of the facility over the term of the analysis. In the case of the Project the analysis was over a 35 year period which is the proposed term of the PBI arrangement.

    - The analysis does not include costs of services that the AOC or other state agency will continue to provide and which would be incurred under both options. For example the costs of providing security services to the facility.

    - The cost assumptions utilized were conservative assumptions where it was assumed that the costs that the PBI partner would incur would be the same as for the AOC. Our experience, and also that of the US Federal GSA[4], is that there is opportunity for the PBI partner to obtain certain efficiencies in the design, build and operations phases through both integration of all the services as well as through different working practices.

- In addition to the core costs of the facility, the financial analysis also takes into account an estimate of risks retained by the AOC under each of the procurement options. This is explained in more detail below.

- This analysis is undertaken to assess the likelihood of whether the Project is a suitable candidate for PBI and is not the final assessment of whether PBI will provide greater value for money that a traditional state bond financed procurement route which will be determined following a full competitive procurement process.

- Typically the same methodology of comparing the NPV of the PSC to the NPV of the PBI solution would be undertaken once the RPF responses have been received to make a final determination on the actual value for money provided by the PBI.

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[3] We have attached as appendix 3 to this letter details on the return requirements stated by various of the major global PPP / PBI players and a summary of a number of recent actual PPP / PBI bids

[4] See report "Unique to Government Costs" from General Services administration dated March 27, 2007

Risk Assessment & Quantification Methodology

- The methodology used to assign a monetary value to risk in the financial modeling of the Project is consistent with generally accepted industry practice for PBI / PPP and other transactions in numerous jurisdictions around the world including many states in the US, the US Federal government, Canada, Australia, the UK and Ireland.

- The monetary value of risk was determined through a review of risk factors by a project team of architects, engineers, cost estimators, construction project managers, financial advisors, legal advisors and risk managers, experienced with large building development. This approach to quantifying risk is consistent with that used by other governments.

- The monetary value of risk for the Project is within a reasonable range of that experienced in other jurisdictions on similar projects.

- Attached to this letter as Appendix 1 is further information on risk assessment and quantification.

Discount Rate

- The financial analysis to compare the two procurement routes was undertaken on a NPV basis. In determining the NPV of the two routes, we ran two different scenarios using two different discount rates. These rates correspond broadly to the rates used by most governmental jurisdictions globally that use PBI or PPP. The two rates used were:

    - A rate of 7.94%. This rate is based on the calculated Project Internal Rate of Return ("PIRR") derived from the financial model used to estimate the costs of the proposed PBI arrangement. The PIRR is a measure of the return generated by a project on the assets employed on the project and provides an indication of the markets' perception of risk in the Project; and
    - A rate of 4.90%. This rate was based on the estimated cost of borrowing for debt raised through the State Public Works Board.

- The result of the financial analysis is set out in the table below and demonstrates that the PBI approach for delivery of the Project is likely to provide greater value for money than the traditional state bond financed approach under both discount rates:

	Discount Rate – 7.94%	Discount Rate – 4.90%
NPV of Traditional Procurement Route ($m)	492	708
NPV of PBI Procurement Route ($m)	440	693
Value for money benefit $m	*52*	*15*
Value for money benefit %	*10.6%*	*2.1%*

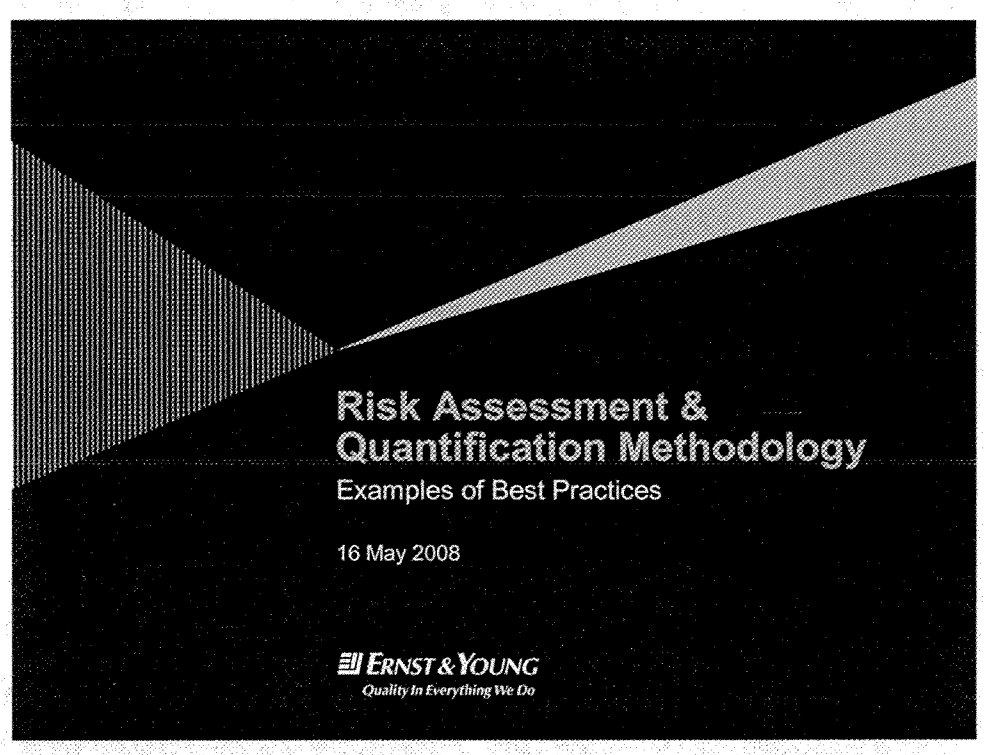
- As set out above this is an estimate of the likely result and the final determination as to whether PBI provides greater value for money would ultimately be evaluated based upon actual PBI proposals and following the completion of the PBI procurement process
- Attached to this letter as Appendix 2 is further analysis on the use of discount rates in the financial analysis of PBI / PPP projects.

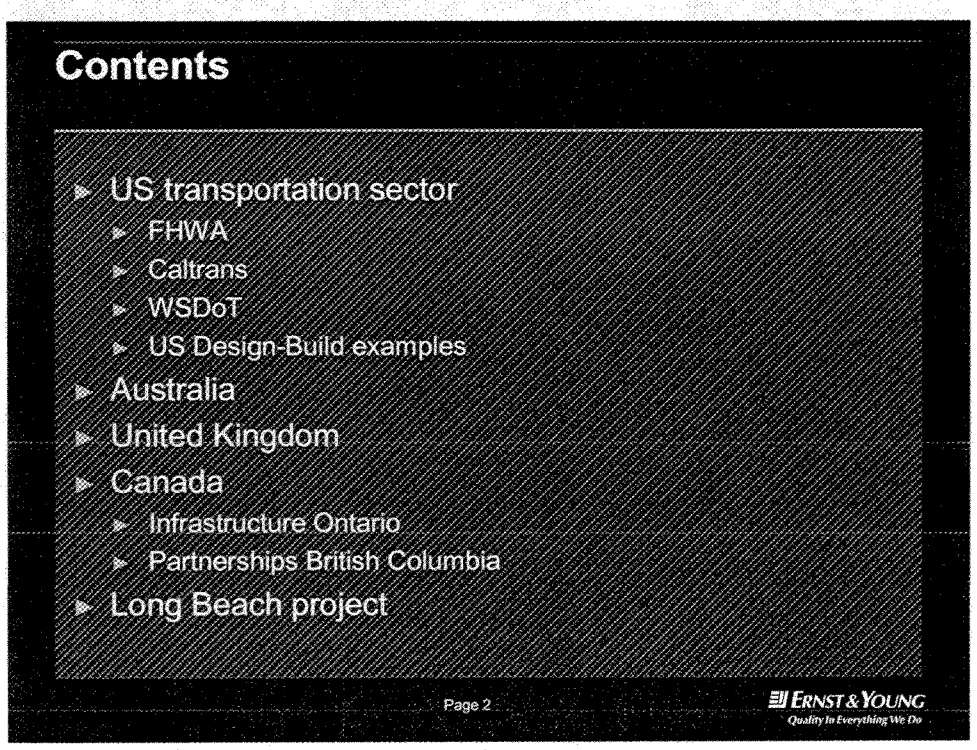
Please do not hesitate to contact me should you have any further questions on the financial analysis or any of the assumptions.

Yours truly,

Tim Philpotts
Senior Vice President

Appendix 1A – Risk Practices and Quantification





Federal Highway Administration US DoT

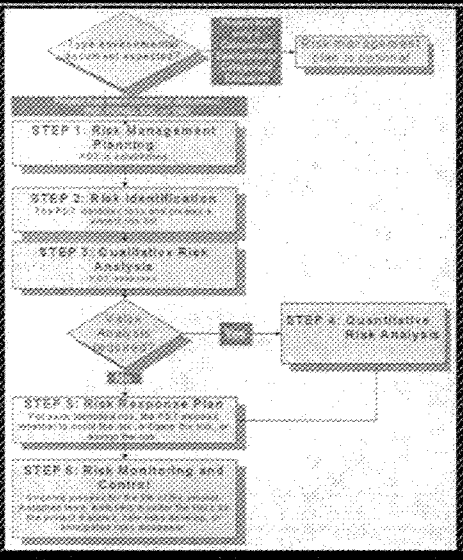
FHWA recommendations on risk assessment:

- more effective processes required
- determine risks
- assign risks to the party best able to manage them
- apply UK risk assessment and allocation models in the US

Caltrans

- Workshop format
- Project Team
  - identify and list risks in a risk matrix
  - determine the likelihood
  - assess consequence
  - make overall assessment of risk
- Value determined by reference to relevant project cost
- Risk register is produced
- Monte Carlo simulation program used

Caltrans risk management process

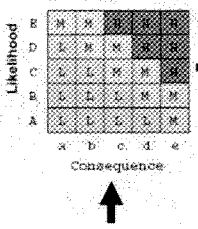


ERNST & YOUNG Quality In Everything We Do

Caltrans risk assessment guide

Level	Likelihood
A	Remote
B	Unlikely
C	Likely
D	Highly Likely
E	Near Certainty

ASSESSMENT GUIDE



RISK ASSESSMENT

High (Red) ..... Unacceptable. Major disruption likely. Different approach required. Priority management attention required

Moderate (Yellow) ..... Some disruption. Different approach may be required. Additional management attention may be needed

Low (Green) ..... Minimum impact. Minimum oversight needed to ensure risk remains low

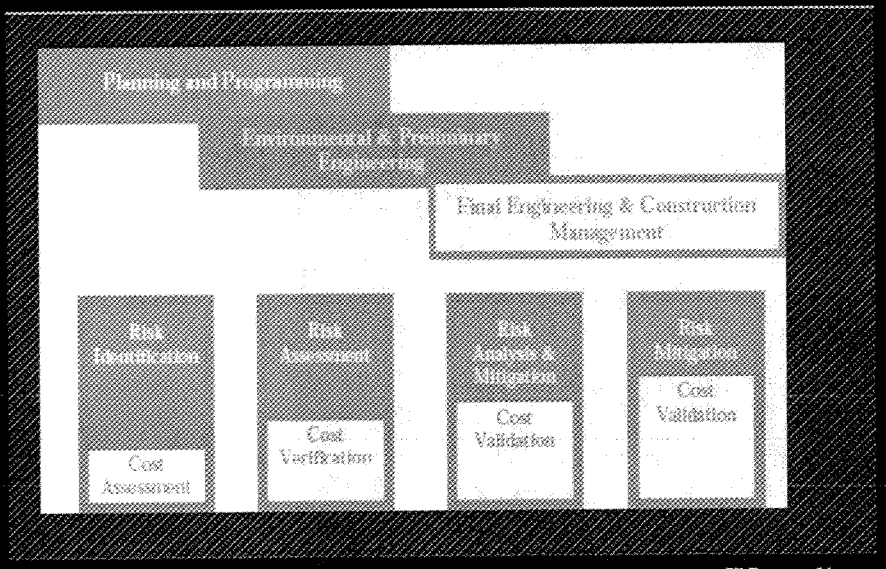
Level	Schedule	and/or	Cost
a	Minimal or no impact		Minimal or no impact
b	Additional resources required, able to meet		<5%
c	Minor slip in key milestones; not able to meet need date		5-7%
d	Major slip in key milestone or critical path impacted		7-10%
e	Can't achieve key team or major program milestone		>10%

ERNST & YOUNG Quality In Everything We Do

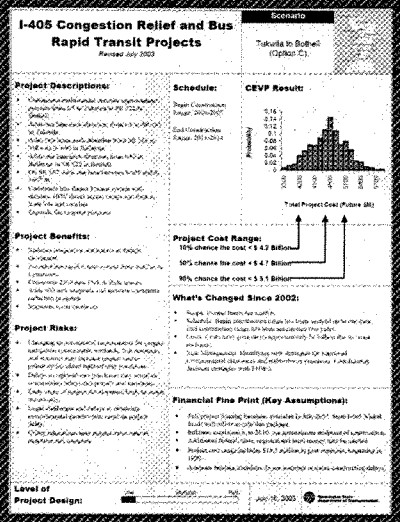
WSDoT

- Workshops used
- Risks reviewed and quantified by
  - engineers
  - risk managers
  - private firms
  - agencies
- Projects using this methodology
  - SR99 Alaskan Way Viaduct
  - SR509/I-5 Freight and Congestion Relief project
  - SR520 Bridge Replacement

WSDoT - risk management process



WSDoT - cost and risk status report


I-405 Congestion Relief and Bus Rapid Transit Projects

Revised July 2003

Scenario

Tukwila to Bothell (Option C).

Project Descriptions:

Schedule:

CEVP Result:

Project Benefits:

Project Cost Range:

10% chance the cost < $ 4.7 Billion

50% chance the cost < $ 4.7 Billion

90% chance the cost < $ 5.1 Billion

What's Changed Since 2002:

Project Risks:

Financial Fine Print (Key Assumptions):

Level of Project Design:

Page 9

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US Design-Build examples

- UT DoT – I-15 conducted risk workshops to
  - identify
  - assess
  - allocate risk
  - agree mitigation measures
- NC DoT – Evaluates risk during the scoping process
- FL DoT – Districts make decisions
  - minimizing risks for the Department
  - minimizing contractor risks
  - determining responsibility

Page 10

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Other best practices - Australia

- Project Team responsible for
  - risk analysis
  - risk management
- Team includes
  - users
  - specialists
  - advisers
  - stakeholders
- Risks are recorded in a risk register
- Likelihood and impact assessed
- Included in Value for Money analysis

Other best practices - United Kingdom

- UK Treasury Green Book guidance on:
  - identifying
  - assessing
  - controlling risks
- Risk register is produced by Project Team
- Monte Carlo analysis is used to model the risks
- Risk added to business case financial model

Other best practices - Canada - Infrastructure Ontario

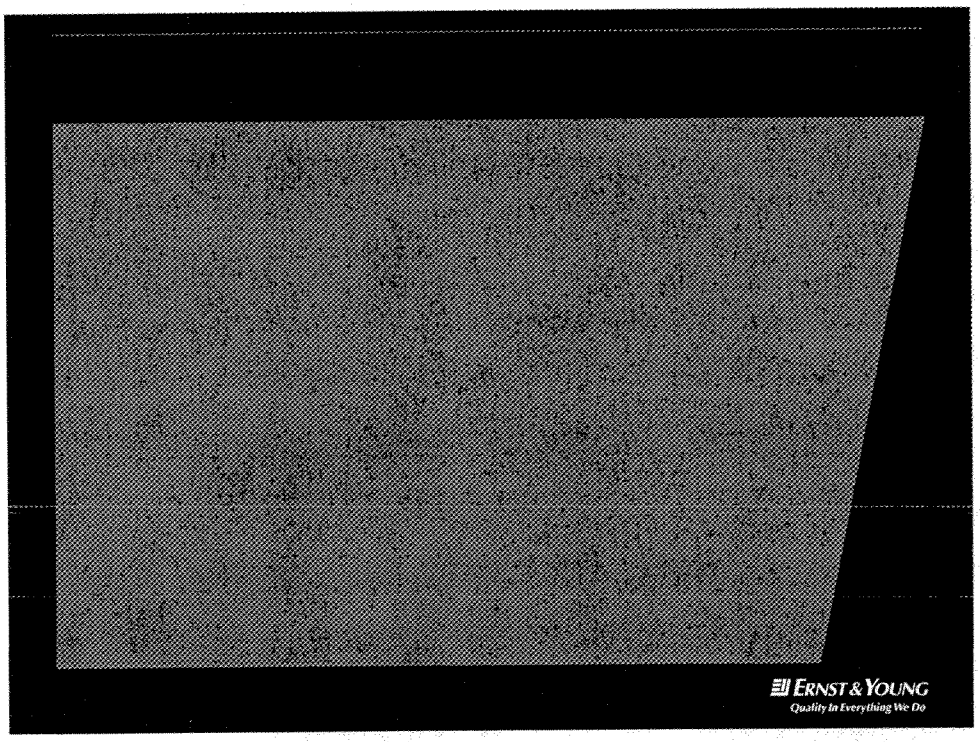
- Risk workshop
  - assessment
  - categorization
  - estimation
- Participants
  - IO staff
  - project sponsors
  - subject matter experts
- Risk included in project's financial models
- Monte Carlo simulation used

Other best practices - Canada - Partnerships British Columbia

- Workshop format
- Members of the project team supplemented with relevant experts
  - identify
  - analyze
  - evaluate
  - quantify
  - risk mitigation strategy
- Risk built into financial models
- Monte Carlo simulations used

Long Beach project

- Durham Court matrix used as a basis
- Project Team workshop used to
  - make matrix project specific
  - determine likelihood of each risk
  - determine consequence of each risk
- Value for each risk determined by reference to relevant Project cost
- Risk added to Project financial models



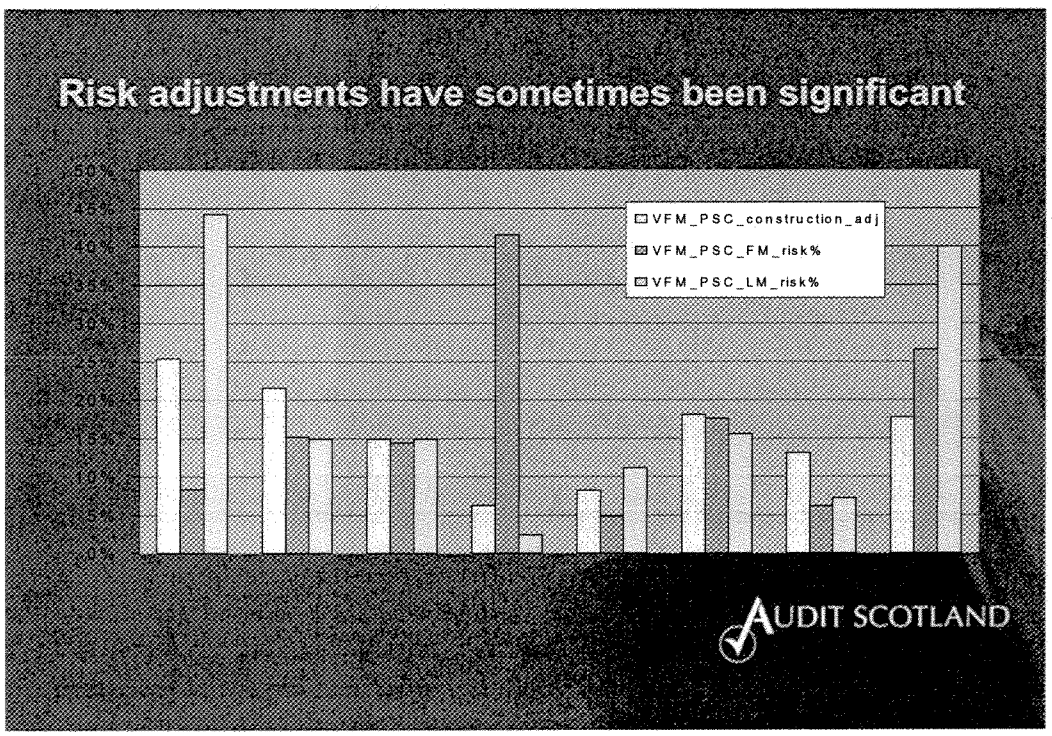
Appendix 1B – Summary of Risk Adjustments and Audit Scotland Risk Adjustment Slide

Examples of quantified risk in PPP projects that have reached Financial Close

Project	NPV of PSC in millions	NPV of risk in millions	%
Durham Consolidated Courthouse	426.0	157.0	36.9
Courts project	18.0	2.7	15.0
Laganside Court Northern Ireland	40.7	4.2	10.3
Accommodation project - not yet published	450.0	176.0	39.1
GCHQ building Cheltenham UK	600.0	156.0	26.0
Home Office HQ UK	494.0	47.0	9.5
Schools project	210.0	32.8	15.6
Schools project	183.6	24.1	13.1
West Middlesex Hospital UK	123.9	12.5	10.1
Hospital project - not yet published	560.0	220.7	39.4
Hospital project	225.1	37.6	16.7
North Bay Hospital	649.0	229.0	35.3
Abbotsford Hospital	463.0	46.0	9.9
Long Beach Court	492.0	127.0	25.8

Notes:

1. risk represents the net risk being the net of risk retained by the public sector entity under both PSC and PPP
2. the majority of PSC prepared by public entities are not public record documents and are confidential



Appendix 2 - Discount Rate

The analysis for the New Long Beach Court Building project was undertaken using two different discount rates to illustrate the effect of the value for money under two separate scenarios. These scenarios correspond broadly to the practices used by most governmental jurisdictions around the globe that use PBI or PPP. The two rates used were:

- A rate of 7.94%. This rate is based on the calculated Project Internal Rate of Return ("PIRR") derived from the financial model used to estimate the costs of the proposed PBI arrangement. The PIRR is a measure of the return generated by a project on the assets employed on the project and provides an indication of the markets' perception of risk in the Project. This rate is often referred to in investment appraisal as a 'risk adjusted rate'; and
- A rate of 4.90%. This rate was based on the estimated cost of borrowing for debt raised through the state Public Works Board.

The result of the financial analysis are set out in the table below and demonstrate that the PBI approach for delivery of the Project is likely to provide greater value for money than the traditional state project delivery approach under both discount rates. As set out above this is currently an estimate of the likely result and the conclusion as to whether PBI will provide greater value for money would ultimately be tested after receipt and evaluation of PBI proposals following the completion of the PBI procurement process:

	Discount Rate – 7.94%	Discount Rate – 4.90%
NPV of Traditional Procurement Route ($m)	492	708
NPV of PBI Procurement Route ($m)	440	693
Value for money benefit $m	*52*	*15*
Value for money benefit %	*10.6%*	*2.1%*

There is no common or agreed best practice with respect to the appropriate discount rate when comparing a project procured as a public or PBI project:

- British Columbia and many other jurisdictions suggest the use of a specific discount rate for each project modified to reflect the risk transfer in a given project. This method is based on the common investment appraisal methodology known as the Capital Asset Pricing Model (CAPM);
- Other jurisdictions such as Ontario assume the government cost of borrowing; whereas
- The United Kingdom for example suggests the use of the social time preference discount rate with risk adjustments for both identifiable risk and "optimism bias";

Using the CAPM, a risk adjusted rate is used to undertake the analysis. The rationale behind using a risk adjusted rate is that the risk adjustment takes account of the systematic [5]risk of undertaking an investment. For a project such as the Long Beach Court Building using strict interpretation of CAPM would require calculation of a 'beta' [6]coefficient, which is applied to the risk free rate and market risk, to determine an appropriate rate. However a more simplified approach would be to calculate the PIRR determined from the estimated financial model of the private sector. The PIRR includes the additional systematic risk that the private proponent must account for within the framework of the risk transfer contemplated through the PBI procurement. The PIRR is derived on the basis of the estimated private financing and the required equity and debt returns and covenants for a project of this nature.

The systematic risk accounted for through the PIRR is independent and separate of the identifiable risks which are accounted for through the risk register and risk adjustment in the analysis. In the case of the Long Beach Court Building the PIRR determined from the financial model is 7.94%.

The rate of 4.90% is often referred to as the "risk free rate" as it represents an estimate of the long term public sector bond rate. The risk free rate ignores the risk of undertaking the investment that is being analyzed and relies for its credit on the underlying credit of the government. The estimate of this rate was based on market yields of bonds issued through the state Public Works Board with a maturity similar to term of the analysis.

[5] Systematic risk is often described as the risk of the entire market or market segment. Examples would be recessions, wars or other events that impact large segments of the market.

[6] Beta coefficient is a measure of the volatility of an investment in relation to the rest of the financial market. A beta of 1 means that the investment is perfectly correlated to the market, 0 it is independent of the market and a negative beta would imply that the investment is negatively correlated to the market.

Appendix 3 – Equity Return Analysis

Return Requirements

One of the areas raised as part of the financial evaluation process has been to question the rate of return assumptions used in the modeling of the proposed PBI option. In the financial model we had assumed an internal rate of return ("IRR") on equity of 12.0%.

We have set out below a summary of:

a. Stated returns from prospectuses or company notices from a selection of the major players in the PBI market on a global basis. The stated returns are a combination of IRR on investments or dividend yields. Both of these will provide an indication of the likely returns that a potential investor will require from a PBI investment
b. IRRs from a selection of recently received PBI projects on a North American Basis.

As can be seen from the table below the assumed return of 12.0% is reasonable given experience in the PBI market.

Entity	Return Requirement	Notes
Return requirements from prospectuses or company notices		
MIG	12.2%	For new acquisitions
UBS	10-13%	IRR requirements
Hochtief	12.1%	RoC
Bilfinger Berger	9%	Hurdle rate for investments
SNC	11%	LTC +6%
Babcock & Brown Public Partnership		
Transfield Fund	7.7%	Dividend yield
3i	12%	Return requirement on investments
Babcock & Brown Infrastructure	7%	Dividend yield
Babcock & Brown Structured Finance	9%	Dividend yield
MIIF	7.1%	Dividend yield
Extracted from recent PBI Bids – all equity IRRs		
Bidder 1	12.00%	
Bidder 2	10.08%	
Bidder 3	11.25%	
Bidder 4	13.35%	
Bidder 5	9.98%	
Bidder 6	13.00%	
Bidder 7	12.00%	
Bidder 8	11.25%	
Bidder 9	10.50%	
Bidder 10	10.65%	
Bidder 11	10.01%	
Bidder 12	12.00%	

DAVIS LANGDON

1331 Garden Highway
Suite 310
Sacramento, CA 95833

Tel: 916-925-8335
Fax: 916-925-0989

www.davislangdon.com

May 19, 2008

Clifford Ham
Principal Architect
Office of Court Construction and Management
Judicial Council of California - Administrative Office of the Courts
455 Golden Gate Avenue
San Francisco, CA 94102-3688

Long Beach Courthouse
Risk Assessment

Dear Clifford,

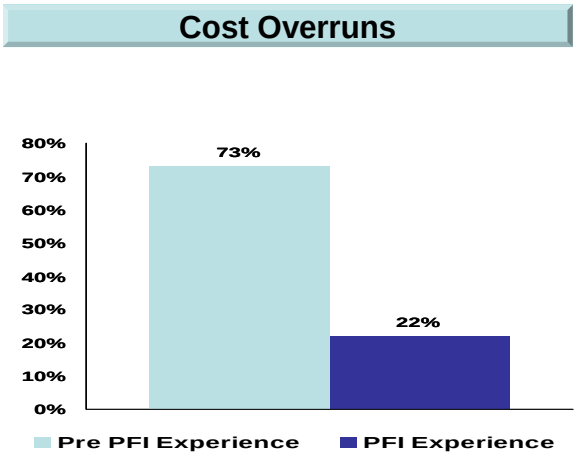
Further to our conversation regarding the risk analysis undertaken for the proposed Long Beach courthouse, I would confirm that it is our opinion that both the analysis and methodology are appropriate for a project of this nature. The use of a structured risk analysis process is the best way of dealing with decisions related to procurement methodology, since the factors involved are predominantly risk related; namely how risk and risk allocation is priced by the market under differing procurement methodologies.

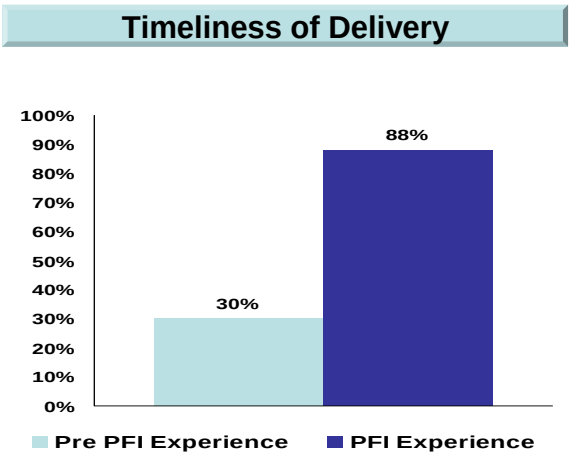
The application of structured risk analysis to conventional construction in the United States is relatively new, but it has been widely used internationally, and in many specialized sectors of the U.S. construction industry for several years. As the benefits of a structured and analytical approach are becoming more widely understood, we are seeing increasing adoption within the broader U.S. market. Within the U.S., Structured Risk Analysis is being now used across a wide range of projects. It is now mandated by the Federal Transit and Highway Authorities on projects that they fund; and even individual school districts around the country are applying it to support their decision making process. Over the past two years, Davis Langdon has provided risk management services on over thirty projects in the United States, ranging in size from $30 million to over $1 billion.

Among the early adopters of Structured Risk Analysis in the United States were process orientated owners, such as the oil and pharmaceutical industries. They were accustomed to using risk management techniques in their operations, and it was a small step to incorporate these techniques into their construction projects. As construction risk process became more formalized and publicized, adoption became more widespread. A major player in this was the Construction Industry Institute (CII), which is a research consortium based at the University of Texas at Austin. The CII has played a major role in developing project management tools, including risk assessment protocols, and, through its members, which include major contractors such as Bechtel, KBR, Flour, URS, and CH2M Hill, and major owners, such as the US Army Corps of Engineers, the State Department, Kaiser Permanente, General Motors, and ExxonMobil, has disseminated risk management to a much wider audience.

Internationally, Structured Risk Assessment is widely used, particularly in evaluation of procurement options. In countries such as the UK and Australia which have been early adopters of Public Private Partnerships and Private Finance Initiatives (PPP/PFI),

risk assessments played a significant role in the decision making. It has also been used to evaluate the performance of these types of project. Research is indicating that the preconstruction Risk Assessment models are broadly accurate, and the PPP/PFI projects do indeed carry a significantly lower risk to the public ownership than traditional design-bid-build processes, as can be seen from the following charts, based on data from the UK government.





Structured risk assessment can be used both to evaluate alternative project approaches, and to develop a risk management program for a given project approach. In both cases, the fundamental process is the same: evaluation of risk includes assessing both the likelihood of an event and the impact of that event. It also includes an assessment of the best allocation of that risk, and potential mitigation strategies that are available to reduce either the likelihood or the impact. Since each project is different, the customary approach is to evaluate the project specific risk through a workshop bringing together the relevant expertise for the project. The risk assessments are of necessity subjective opinions of the attendees, but represent the collective wisdom of the group.

When comparing alternative approaches, the goal of the workshop is to generate analytical support for selection of an approach. As such, the mathematical outcome of the process is intended to provide direction through the preponderance of evidence, rather than a specific valuation of the risk. By its nature, risk is inherently unsettled. The stated average risk, and the risk distributions and ranges are indicative, not predictive. The risk analysis will show which of the alternative approaches carries higher potential risk, both in overall magnitude and range.

When developing risk management strategies within a given procurement method, the goal of the workshop is to identify and quantify specific risks, and to assess the best strategies for managing them. These strategies will include allocation of risk to the party best able to manage or control the risk, establishment of contingencies, identification of required information or investigations, etc.

Risk assessment has always been a part of project decisions, but traditionally it has been done intuitively or experientially. Project teams have generally taken the approach that they know how best to procure or manage a project. When contractors put together their bids, they inherently value the risk in a project. Design, bidding and construction contingencies are traditional risk management tools, developed over years of project experience.

In recent years, two significant factors have challenged this approach. The first is the increasing level of risk in construction, and the second is the greater consequence of failure as projects get larger. Coupled with this is the recognition of the waste and inefficiency inherent in the traditional management process.

Increasing risk levels are coming from unprecedented commodity price increases, volatility in material pricing and availability, highly constrained labor and subcontractor pools, the current liquidity crisis, and the general economic picture. Overall, the factors that are driving the increased risk appear to be set to prevail for the foreseeable future. Commodity prices are being driven by shifts in global supply and demand. For many strategic commodities demand is close to, or exceeding 100% of global supply. At this point, small changes in supply or demand can lead to excess supply or excess demand creating rapid, non-linear shifts in price. There are also indications that commodity prices are attracting speculative investment which further distorts the market. Labor and subcontractor capacity is very slow to react, particularly in the areas of skilled labor and superintendent resources. Due to a long decline in recruitment, the construction industry is likely to be facing a severe shortage of available workers and business owners in the coming years. Whilst the liquidity crisis appears to be moving out of the first critical phase, the long-term impact on the economy and availability of funds is likely to persist for several years.

For small, simple projects, the consequence of a failure to plan adequately for risk are relatively small, and can generally be handled within customary industry practices through the use of contingencies, supplemental funding, and scope reduction. For larger projects the potential impact exceeds these resources. This can lead to significant delays as projects are re-scoped, and loss of functionality as significant program elements are eliminated to match available funds.

There are several costs inherent in the traditional approach to risk management, which can be reduced or eliminated through appropriate risk assessment and allocation. Capital is tied up in contingencies leading to increased financing costs or lost opportunity value of that money. Reactive risk management generally has a smaller range of options available to reduce cost once the risk becomes known. Typically reactions occur late in design, or during construction, when the cost to implement is high, and the potential for saving is low. In addition there is a waste of duplicated effort when designs are reworked.

In conclusion, we believe that structured risk analysis a highly valuable tool in improving the quality of decision-making regarding procurement methods, particularly for large challenging projects such as the proposed Long Beach courthouse. From an analytical perspective, it is important to remember that the detailed outcomes of such early stage studies are more indicative then predictive, highlighting the magnitude and range of risk associated with each option.

We would be pleased to discuss these comments with you at your convenience.

Sincerely,

Peter Morris

DAVIS LANGDON

1331 Garden Highway
Suite 310
Sacramento, CA 95833

Tel: 916-925-8335
Fax: 916-925-0989

www.davislangdon.com

June 2, 2008

Clifford Ham
Principal Architect
Office of Court Construction and Management
Judicial Council of California - Administrative Office of the Courts
455 Golden Gate Avenue
San Francisco, CA 94102-3688

Long Beach Courthouse
Escalation Experience

Dear Clifford,

Further to our conversation regarding escalation experience in California, we would offer the following analysis. I am also attaching a copy of a paper we prepared in September 2007 regarding the construction market in Los Angeles in the third quarter of 2007. This documents our published opinions of the market at that time.

Escalation History

The past five years have seen very dramatic increases in construction costs in Southern California, and more notably increases in the volatility of construction costs. Much of the increase has been driven by extremely high demand for construction services, which has led to a severe imbalance between demand and capacity within the construction industry at all levels. The imbalance has been most pronounced in the sectors with the lowest supply elasticity; these are typically the larger or more complex projects, or the ones with the least attractive contracting conditions. The projects, therefore, that have been the most impacted are large-scale or sophisticated public and institutional projects. The hardest hit of all have been hospitals, which have seen escalation exceeding 15% per annum in some of the years, and cumulative escalation exceeding 100% over the past five years. For large public projects of the size and scale of the proposed Long Beach courthouse the overall escalation has been in the range of 50% to 60%.

In the past year, escalation has abated somewhat. The reduction in escalation has been most noticeable in the smaller simpler projects, which in some cases are even showing deflation over the past 12 months. This is despite continued increases in the underlying cost of materials and labor, reflecting the significant reduction in demand for construction services and the resulting excess capacity in the contracting market. For large-scale projects the reduction in the rate of escalation has been less dramatic, since the reduction in demand has been smaller, and the overall market capacity is less. We would estimate that the escalation in the past year has been in the range of 3% to 5%. This is included in the 50% to 60% range stated above.

In the coming two years, escalation in Southern California is likely to remain relatively low, since demand for construction services is unlikely to grow significantly in that period of time. There is, however, a great deal of uncertainty in the construction market. The cost of construction materials remains very volatile, and the risks associated with increasing prices and the uncertainty economy continue to put pressure on potential bidders. There is a small, but significant, possibility that the rate of escalation could change quickly and unpredictably due either to sudden increases in material costs, or to significant reductions in contractor capacity from insolvency or defaults.

Project Experience

In the past five years many projects have experienced significant budget problems. This includes large public works projects in Southern California. In many cases the budget problems have been addressed during design through significant reductions in quality or program, but there have also been many projects which received bids significantly in excess of their available funds. In both responses, the constant struggle to cope with rising costs often leads to extensive redesign, delay and wasted effort.

From our own experience on projects for which Davis Langdon has provided construction cost consulting services, we have seen significant cost challenges on most projects, with bid overages, or design period scope adjustments amounting in many cases to 20 to 30% of the original budget.

Because of the differing responses to the cost challenges it is not practical to develop a statistical analysis of actual cost variances on specific projects in the past five years. Many projects appear to be on budget, but are delivering significantly reduced quality, performance or scope; others have budgets augmented during programming or early design, and so there is no consistent database of project costs which includes the initial budget, actual bid price, and scope and reduction changes during design. There is, however, extensive project specific data and anecdotal information related to the experience of major public agencies within the state of California.

Recent Courthouse bid experience in California.

The Morgan Hill County Courthouse

This is a project which was bid in 2004, in the early days of the current escalation trend. It was originally budgeted at around $24 million and bid at around $30 million. In this case, the county chose to augment the project funds in recognition of the delay that would be involved in redesigning the project, and the impracticality of being able to reduce scope or quality sufficiently to meet the original budget.

Los Angeles Federal Courthouse

The project was being solicited using a Design/Build process, but the GSA cancelled the bidding in 2006 due to a lack of available bidders. The overall project construction budget is in the range of $500 million.

San Diego Federal Courthouse

The project was bid in 2006 under a GSA Design/Build process. Bids received were significantly in excess of the project budget, and the GSA opted to redesign the project and rebid. The redesign is currently in process, and rebidding is expected to occur in 2009. The overall project construction budget is in the range of $300 million.

DAVIS LANGDON
1395 Garden Highway
Suite 150
Sacramento, CA 95833
Tel: 916-444-5797
Fax: 916-444-5799
www.davislangdon.com

Other Anecdotal Information

The following texts come from public records documents, and indicate broadly the experience of other California public entities.

University of California

The text selections come from a report from the University of California Office of the President to the Board of Regents. It references significant increases in construction cost, and the efforts that the Office of the President is making to reduce the impact of construction cost overages. In other sections of the report there is data related to specific project budget augmentations to address individual bid overages. The bold text has been added to highlight strategies that are being undertaken at the University of California which are similar to those being proposed for the Long Beach courthouse project

The relationship between these numbers and the increases in augmentations points to the difficulty of holding project budgets in a highly inflated and volatile construction market even when progress is being made to reduce schedule changes.

. . .

Just as last year, the percent difference between the original budgets and the final budgets of the projects completed during the fiscal year (3.7 percent) and the percent difference between the original budgets and current budgets of all projects still active at the end of the year (12 percent) mirrors the changes in the construction market that have occurred over the last three years.

In a time of escalating and volatile construction costs, design and project management responses are critical to optimizing the construction dollar. Over the past three years the University has implemented strategies to address construction market volatility, improve the University's working relationship with the construction industry, improve contract delivery methods, and optimize building design. These ongoing design and project management responses include:

- *Using alternative project delivery methods such as design/build and privatized development where appropriate. . . .*
- *Improving the working relationship with the construction industry by addressing such issues as risk allocation in our contracts and improving invoice payment processes.*
- *Implementing strategies for addressing construction market volatility such as bid process modifications to attract more bidders and bid alternate packages.*
- *Requiring flexible designs that facilitate scope and design changes.*
- *Monitoring and building upon SB 667. . .* [1]

[1] http://www.ucop.edu/facil/pd/documents/maj_cap2006-07.pdf

DAVIS LANGDON
1395 Garden Highway
Suite 150
Sacramento, CA 95833
Tel: 916-444-5797
Fax: 916-444-5799
www.davislangdon.com

Los Angeles Unified School District

The text selections come from a report in the Los Angeles Business Times dated January the 28th, 2008. It indicates that the Los Angeles Unified School District has had to reduce the overall number of new schools in the program by over 10% to accommodate rising costs and cost overages.

It's bigger than Boston's $14.6 billion Big Dig and dwarfs the potential $5 billion westward expansion of the Metropolitan Transportation Authority's subway down Wilshire Boulevard. It's the Los Angeles Unified School District's $20 billion school building program--by some measures the most expensive municipal project in the country's history. The district is constructing 132 schools, renovating hundreds more and adding a total of 180,000 classroom seats.

. . .

More threatening, a staggering rise in construction costs has forced LAUSD to curtail the program from three years ago, when 160 new schools were envisioned. It turns out $20 billion may not be enough when demand for steel and other raw materials from emerging economies such as China has run construction costs up 150 percent to $500 per foot.

In recent months, the district has "unfunded" 18 schools, cancelled expansions at some existing sites and decided to downsize others across the city. Just last week five more planned schools were downsized.[2]

Los Angeles Community College District

The text selections come from a report published in the quarterly publication of the Community College League of California. The full text of the report outlines the experience in several community college districts. The text selection refers specifically to the experience of Los Angeles.

Los Angeles - The state's largest district passed two of the largest bonds totaling $2.2 billion with projects planned at all nine campuses. Construction costs have risen from $250 a square foot last year to $350 this year. Reports Larry Eisenberg, executive director of facilities planning and development, " Construction costs skyrocket, forcing districts To cutback on Prop. 39 campus projects[3]

As can be seen from these text selections, it is clear that public projects in the State of California have experienced significant cost pressures, and as a result have been forced to reduce project scope and quality, or seek additional funding. It would be very easy to expand this list with citations from individual projects, and from other published reports by public agencies within the state, including cities, school districts, state agencies, federal agencies, and suchlike.

[2] Making the grade: the LAUSD is digging in with its $20 billion school building program, giving a big boost to L.A.'s construction industry. Los Angeles Business Times, January 28, 2008, http://findarticles.com/p/articles/mi_m5072/is_4_30/ai_n24359965

[3] Ray Giles, Community College League of California, Summer, 2005 issue of The News, a quarterly publication of the Community College League of California. http://www.nocccd.edu/Departments/FandF/FacilitiesBond/CCLC%20Article_081705.pdf

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Sincerely,

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DAVIS LANGDON
1395 Garden Highway
Suite 150
Sacramento, CA 95833
Tel: 916-444-5797
Fax: 916-444-5799
www.davislangdon.com

Construction Escalation in Los Angeles
1992 - 2007

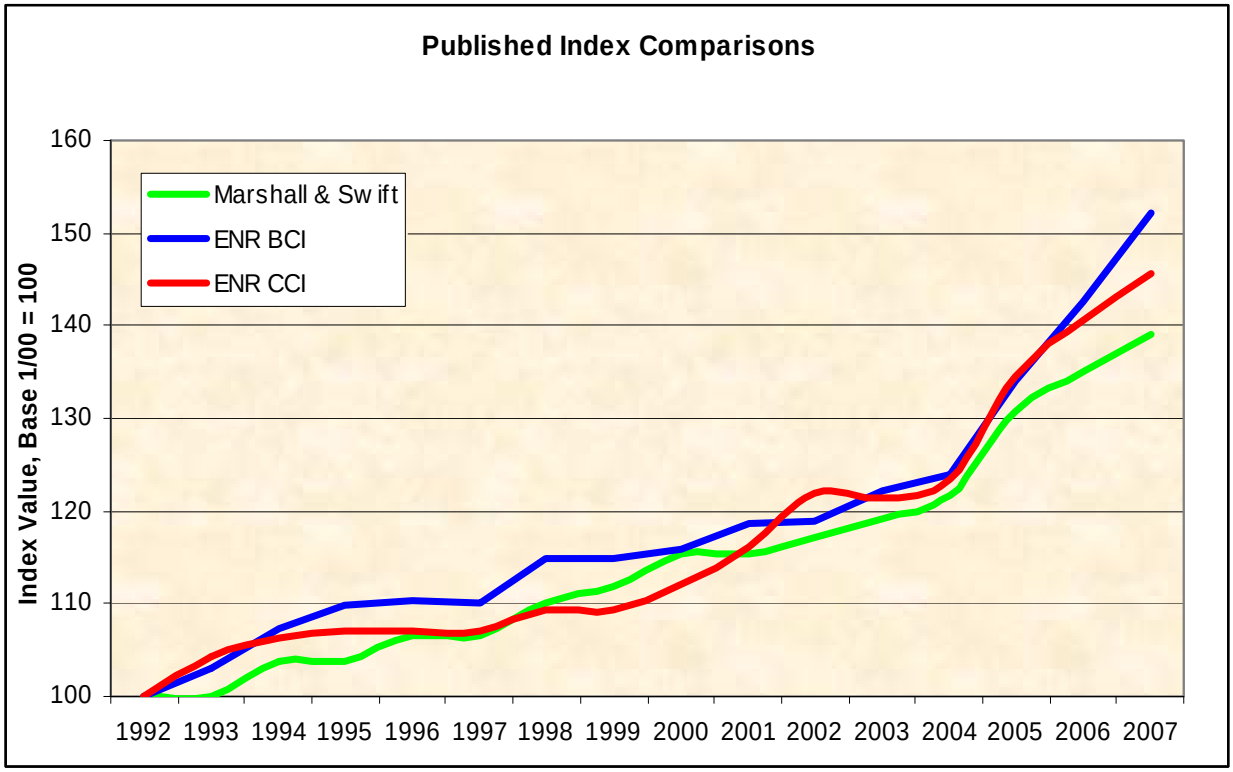
Published Indexes

There are three major published time series cost indexes for the Los Angeles area. These are:

- Marshall & Swift (Quarterly)
- ENR Los Angeles BCI (Monthly)
- ENR Los Angeles CCI (Monthly)

All of these are input cost indexes, that is, they track the cost of a basket of inputs to the construction process. None of them reflect market conditions or changes in overhead and profit. The size of the basket and the relative weighting varies between indexes. Marshall & Swift represents reasonably large baskets, weighted to represent typical large commercial construction. ENR is a relatively small basket. In addition, the ENR index, while published monthly, only adjusts for labor annually, which accounts for the sharp step up in October of 2006.

Below is a chart showing the relative movements of these four indexes. For the chart, all have been adjusted to a common base of January 1992 at 100. A table of the raw index values, and the effective percentage change in each since January of 1992 is appended at the end of this report.



DAVIS LANGDON
1395 Garden Highway
Suite 150
Sacramento, CA 95833
Tel: 916-444-5797
Fax: 916-444-5799
www.davislangdon.com

Market Analysis

Since much of the cost escalation is a market response by bidders, as opposed to simple changes in input costs of materials and labor, most published indexes fail to measure the cost rise adequately. These published indexes exclude any measure of contractor overhead and profit, either at the general or the subcontractor level. In order to document the changes it is necessary to compare total bid pricing across a range of projects by re-pricing recently bid projects with comprehensive pricing from previously bid projects. Based on re-pricing studies undertaken by Davis Langdon, we would estimate past escalation to be as follows:

2000 – 2001	2% – 4%
2001 – 2002	1% – 3%
2002 – 2003	3% – 6%
2003 – 2004	6% – 10%
2004 – 2005	12% – 18%
2005 – 2006	10% - 12%
2006 – 2007	8% - 10%

Bid Anomalies

In addition to the broad, time based escalation, we have seen significant bid anomalies, with widely varying bids on individual projects, and very high bids on certain projects; bids which can not be explained by simple escalation of unit rates. Unit rates for labor and material will vary between similar contemporary projects. This has been occurring over the past three to four years. The volatility is driven primarily by very high construction demand and very high levels of risk for bidders.

The high levels of construction demand are leading to shortages of qualified bidders, both at the general and sub contractor levels, and shortages of labor, most particularly in the supervisory levels. These shortages mean that many bidders are fully committed, and can not bid on new work, and the remaining bidders can be more selective in the projects they pursue. Contractors are limiting exposure to projects they view as challenging, including complex projects, projects with constrained sites or schedules, public bid projects, and long duration projects, to name a few.

The high risks are a result of a very volatile materials and labor market. Bidders have experienced very dramatic price shocks in several key materials, and difficulty obtaining key materials and sufficient labor to complete projects. Consequently, they are including significant risk premiums in bids to cover the possibilities of further price increases and labor shortages. Another outcome of the labor shortage is that quality is difficult to maintain, leading to more extensive punchlists and rework. This also has a cost impact on contractors.

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The bid anomalies are difficult to forecast, but have resulted in bids that come in 20% - 40% over thoroughly reviewed and escalated cost models.

Future Escalation

The current strong demand for construction shows little sign of abating. Increasing interest rates will tend to diminish demand for construction as construction capital availability is reduced. The rise, however, is likely to be slow enough that the effect will be offset by the continued strength in the overall economy. In the absence of any dramatic inflationary pressures in other sectors which might lead to a sharper change in interest rates, we expect economic strength to be the dominant force.

Going forward, we anticipate that economic strength will remain the dominant factor, but with diminished force as the market adjusts to the continued strength. There are several deflationary possibilities on the horizon, including more major natural disasters, significant illness outbreaks, or international instability, any of which alone, or in combination, could disrupt the economy sufficiently to create deflationary pressure. Nevertheless, we would anticipate continued moderate to strong construction cost escalation to continue over the coming few years.

We are therefore recommending the following escalation factors for projects in California:

2007 – 2008	8% – 10%
2008 – 2009	6% – 8%
2009 – 2010	6% – 8%

The factors are cumulative, and based July to July.

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Suite 150
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Tel: 916-444-5797
Fax: 916-444-5799
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Los Angeles	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007
Raw Index #'s	Jan	Jan	Jan	Jan	Jan	Jan	Jan	Jan	Jan	Jan	Jan	Jan	Jan	Jan	Jan	Jan
M&S*	1.664	1.664	1.6	1.6	1.555	1.555	1.496	1.467	1.409	1.41	1.38	1.346	1.305	1.153	1.082	1.015
ENR BCI	3101.4	3198.6	3331.2	3410.1	3421.3	3412.7	3560.5	3560.5	3593.19	3680.26	3687.57	3786.01	3844.8	4156.27	4422.86	4720.47
ENR CCI	6093.7	6348.4	6474.6	6522.6	6520.2	6521.7	6663.6	6663.6	6828.14	7072.04	7432.24	7401	7529.27	8193.21	8573.42	8871.09
Change from 1992																
Marshall & Swift	100	100	104	104	107	107	110	112	115	115	117	119	122	131	135	139
ENR BCI	100	103	107	110	110	110	115	115	116	119	119	122	124	134	143	152
ENR CCI	100	104	106	107	107	107	109	109	112	116	122	121	124	134	141	146

* Values from Marshall & Swift are available only every two years for all dates earlier than January of 1999

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Suite 150
Sacramento, CA 95833
Tel: 916-444-5797
Fax: 916-444-5799
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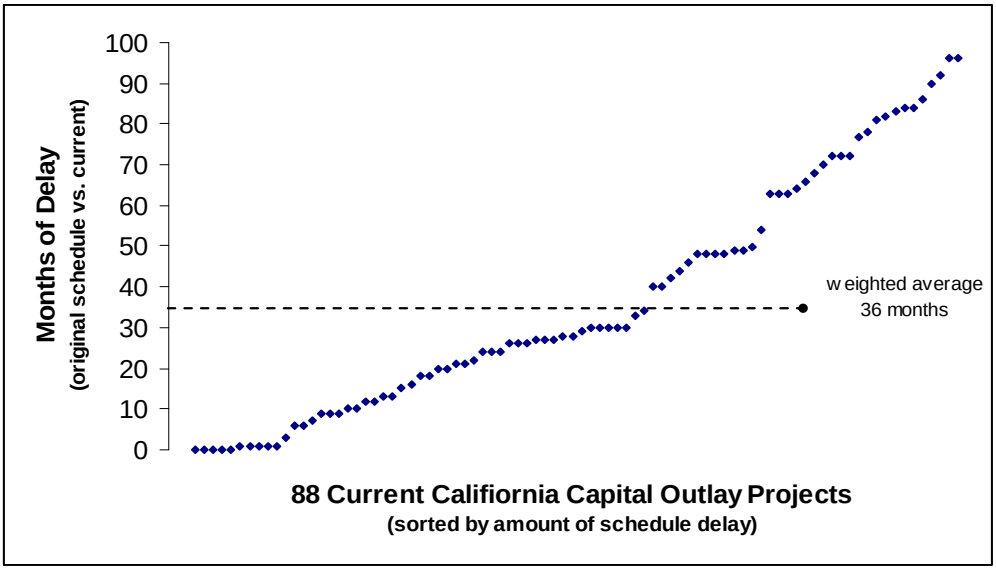
SCHEDULE PERFORMANCE OF STATE PROJECTS

Project Delivery Schedule- planned timetable from site selection through building occupancy:

An analysis of ongoing projects in the Working Drawings and Construction phases as shown in the December 31, 2007 Quarterly Summary of Capital Outlay projects prepared by the California Department of General Services (DGS) demonstrates that 77 of the 88 were behind schedule. The average original schedule for project delivery was 41 months, but various delays have added 36 months to the average completion date. Because of significant annual escalation in the cost of construction, delays in project completion are often the basis for project budgets overruns. These public building endeavors represent $2.26 billion in total project costs.



Data based on the December 31, 2007 Quarterly Status Report for Major Capital Outlay Projects prepared by DGS.

DGS serves many departments and therefore projects of many different building are included in this review. Projects included are active projects that were started between July 1996 and March 2007, and are currently in the working drawing or construction phase.

This review of schedule performance for the 88 current public building projects in California revealed that:

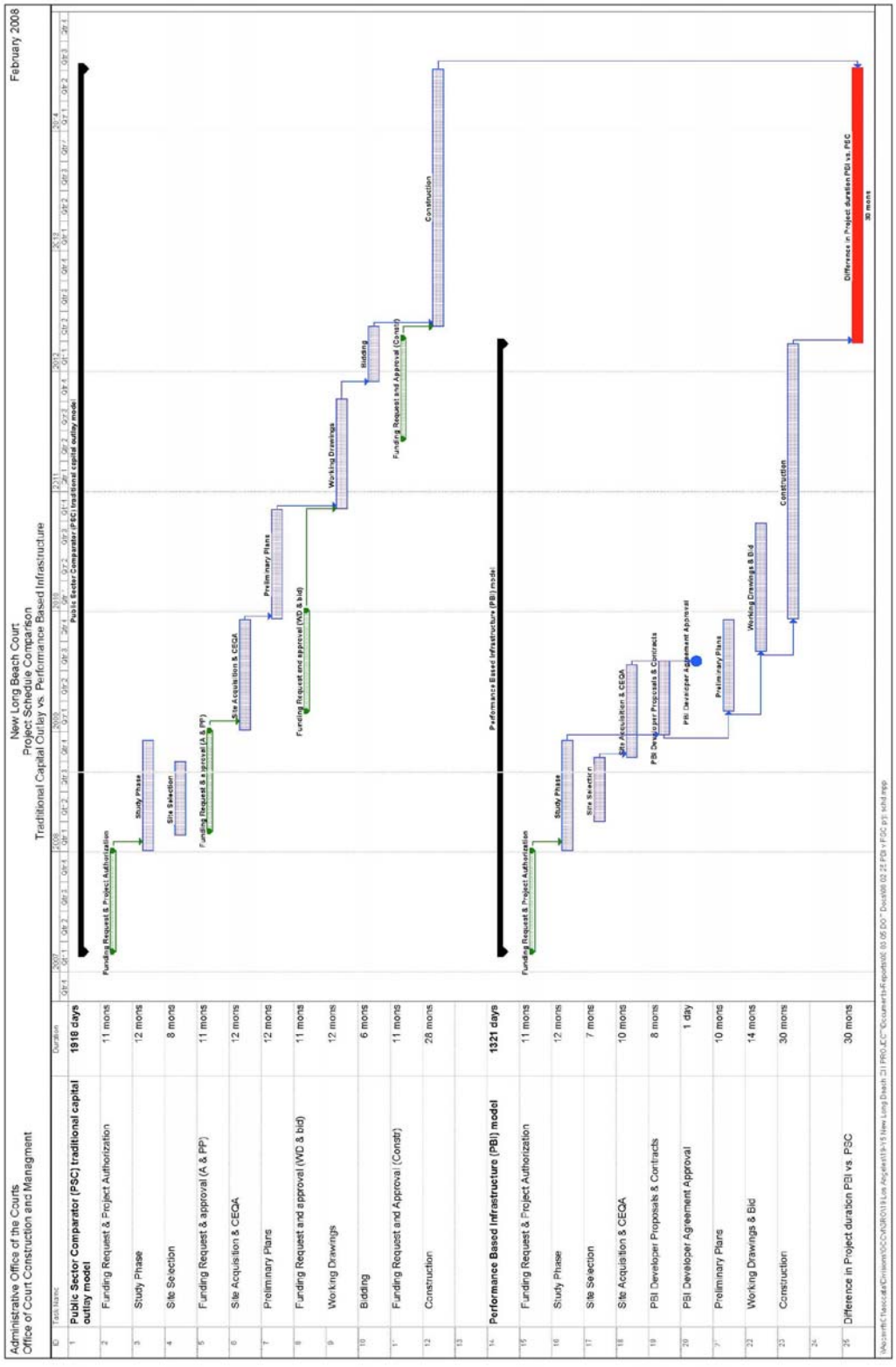
- Eleven projects are said to be on time, early, or to be completed within 1 month of the original schedule. (12.5%)
- The average project delivery was originally scheduled for 41 months. The current average project delivery and completion is 77 months, or three years late.
- The average percentage increase for the 88 projects in 115%. The average weighted percentage increase in 87%.
- The list includes those still active projects started between July, 1996 and March, 2007, which are currently in the working drawing or construction phase.
- Weighted average sums all the originally scheduled months, all the currently scheduled months and determines the overall average percentage increase of the total (3153/3645 = +87% or 36 months) between the two, versus averaging the individual percentage increase by each project or +115%.

AOC's assessment of the likely design and construction schedule indicates that the performance based infrastructure approach would provide the new Long Beach court building thirty (30) months earlier than if the project followed a traditional approach used in state capital outlay building projects.

This time advantage is due to an overlap of CEQA environmental clearance performed by the AOC with early design activities, and fast-track design and construction by the PBI Company. Conceptual and schematic design would occur during the PBI proposal stage, once selected the PBI Company would immediately begin design development, then plans and specifications are prepared for sequential bid packages to procure construction contracts in increments as needed for the site work and building assembly. Simultaneous working drawings, bidding and construction is a proven method used in private sector real estate development to avoid cost escalation and to expedite building completion.

The PBI approach to this project could achieve an earlier construction start (compared to the traditional design and construction schedule – see following schedule) that is likely to avoid an estimated $34.1 million of construction cost escalation, or about 10% of the total project cost for the proposed new Long Beach court building.

The PBI Company would be motivated to use fast-track design and construction since payments by the State will not begin until the Superior Court begins activities in the new building.


Administrative Office of the Courts
Office of Court Construction and Managment
New Long Beach Court
Project Schedule Comparison
Traditional Capital Outlay vs. Performance Based Infrastructure
February 2008
Public Sector Comparator (PSC) traditional capital outlay model
Performance Based Infrastructure (PBI) model
Funding Request & Project Authorization
Study Phase
Site Selection
Funding Request & approval (A & PP)
Site Acquisition & CEQA
Preliminary Plans
Funding Request and approval (WD & bid)
Working Drawings
Bidding
Funding Request and Approval (Constr)
Construction
PBI Developer Proposals & Contracts
PBI Developer Agreement Approval
Working Drawings & Bid
Difference in Project duration PBI vs. PSC
30 months

DEDUCTIONS FROM PAYMENTS TO PROJECT COMPANY

I. Performance and availability

Availability criteria

The Design and Construction output specifications, within the PBI contract, detail the required conditions that areas of the building must meet in order to be considered to meet the availability criteria (for example, these will include building temperatures, accessibility etc).

The building will be sub-divided into areas which will be weighted according to their importance to the AOC and Superior Court. These weightings will be used for monitoring performance and determining Unavailability.

Performance

In addition to Unavailability Deductions under a standard PBI payment arrangement the AOC and Superior Court would also be able make deductions for FM performance failures. This would cover circumstances where the Project Company does not meet its obligations under the Project Agreement but which do not result in Unavailability are areas of the building.

Performance failures would be measured by reference to the performance indicators set out in the output specifications contained within the Project Agreement

II. Cure periods

- In circumstances where the Project Company does not meet the either the availability conditions or the performance indicators or both, as set out in the PBI contract, the PBI Company may have a cure period if one is specified in the contract.
- If there is no cure period specified then the PBI Company will suffer an immediate financial penalty.
- Where there is a cure period it may consist of two different elements, a Response Time and a Rectification Time, both of which are triggered from the time of reporting the failure and both of which run concurrently.
- The Response Time is a relatively short period of time where the PBI operator will attend, assess the situation/failure and make safe. Should the PBI operator meet the Response Time then the PBI Company will not suffer a financial penalty for failure to respond.
- The Rectification Time is a longer period of time where the PBI Company will be expected to carry out full rectification of the failure. Should the PBI Company meet the Rectification Time then the PBI Company will not suffer a financial penalty for failure to rectify.
- The payment mechanism generally provides for the PBI Company to make a temporary repair, where reasonable, and where this has been agreed with the AOC and Superior Court then no deduction would be made from the performance payment.
- Some payment mechanisms in the PPP market allow the PBI Company to offer temporary alternative accommodation which, if accepted by the AOC and Superior Court, would mean that deductions could not be made from the performance payment whilst the temporary alternative accommodation was being occupied by the AOC and Superior Court.

III. Deductions from the performance payment

Under a performance based regime that incorporates the Facilities Management contract performance the following deductions would only apply in respect of unavailability.

- Failure to meet either a Response Time or a Rectification Time or both will result in financial deductions from the payment due to the PBI Company under the Payment Mechanism.
- If an area of the building does not meet the availability criteria, and both of the following apply;
    - there is no Rectification Time or the failure is not rectified within the Rectification Time; and
    - the applicable space is not occupied by the AOC and Superior Court

- Unavailability Deductions will be made and the monetary amount of the Unavailability Deduction will be based on the relative importance of that space and the length of time that space fails to meet the availability criteria.
- In respect of performance, each indicator that the PBI Company is required to meet will be designated as high, medium or low according to its level of importance to the AOC and Superior Court.
- Each level of importance will have its own specific standard $ deduction amount (index linked) which will be applied for each and every performance failure and which will be subtracted from the monthly payment in arrears.

IV. Unavailable but used areas

For areas of the building that do not meet the availability criteria but which the AOC and Superior Court chooses to continue to occupy the corresponding deduction from the payment for that “Unavailable but Used” area will be reduced by 50%.

V. Total Unavailability

The payment mechanism may contain a provision whereby if an essential area is Unavailable or a certain percentage of the overall floor area (say more than 25% of the total) then the entire court building is deemed to be unavailable and no payment is made. Essential areas could include the sallyport.

VI. Linked areas

Similar to the concept of deemed unavailability as described under 7 above, certain areas of the building can be linked together where they are operationally independent, such that if one of the areas is unavailable then it is not practical to use the other linked areas. An example may be linking a video testimony room to a courtroom.

VII. Repeated failures

To ensure Project Company is incentivized to make adequate rectification where unavailability or performance failures subsist, additional penalties will apply for repeated failures. Where there are repeated failures in the same location or multiple failures arising from the same root cause, additional deductions will be made from the performance payment. When the same event occurs more than [A] times in any one contract day or more than [X] times in any consecutive [Y] day period a [low] category performance failure shall be deemed to have occurred for each and every event during the contract day or [Z] day period as applicable and the relevant deductions will be made from the performance payment.

Availability Deduction Example

The project agreement includes a full schedule of values for unavailability deductions

Functional Unit	Linked Functional Unit	Deduction Value	# of Units	Sessions Unavailable	Total Deduction
Trial Courtrooms	✓	$320	2	2	$1,280
Courtroom Entry Vestibule	✓	$133	2	2	$532
Holding Cells between Courtrooms	✓	$160	1	2	$320
Interview Room @ Courtroom	✓	$107	2	2	$428
Video Remand Booth	✓	$133	2	2	$532
Courtroom Waiting Area	✓	$80	1	2	$160
Total Unavailability Deduction					**$3,252**

Example: One courtroom holding area is unavailable for one full day (2 court sessions)

Though only the holding cells between a courtroom pair is deemed to be unavailable, PBI Company also incurs deductions for other functional units pre-identified as related. Because these other functional units (e.g. the courtrooms & related areas) are effectively unusable.

Total unavailability deduction value is $3,252 per day for this example.